

CASE NO. 1:16-cv-08423

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re CAESARS ENTERTAINMENT OPERATING COMPANY, INC., ET AL., *Debtors*.

CAESARS ENTERTAINMENT OPERATING COMPANY, INC., ET AL., *Appellants*,
v.
BOKF, N.A., ET AL., *Appellees*.

*Appeal from the United States Bankruptcy Court for the
Northern District of Illinois, Case No. 15-01145, Adv. Pro. No. 15-00149*

APPELLEES' SUPPLEMENTAL APPENDIX

JONES DAY
Morgan R. Hirst
77 West Wacker Drive
Chicago, IL 60601
(312) 782-3939

Bruce Bennett
James O. Johnston
Sidney P. Levinson
Joshua M. Mester
555 South Flower Street, 50th Floor
Los Angeles, CA 90071
(213) 489-3939

KELLEY DRYE & WARREN LLP
Eric R. Wilson
David I. Zalman
101 Park Avenue
New York, NY 10178
(212) 808-7800

*Counsel for Appellee Wilmington
Savings Fund Society, FSB*

FOLEY & LARDNER LLP
Mark F. Hebbeln
Lars A. Peterson
321 North Clark Street, Suite 2800
Chicago, IL 60654-5313
(312) 832-4500

ARENT FOX LLP
Andrew I. Silfen
Mark B. Joachim
Mark A. Angelov
Beth M. Brownstein
1675 Broadway
New York, NY 10019
(212) 484-3900

Jackson D. Toof
1717 K Street, NW
Washington, DC 20006
(202) 857-6000

Counsel for Appellee BOKF, N.A.

DRINKER BIDDLE & REATH LLP
Timothy R. Casey
191 North Wacker Drive, Suite 3700
Chicago, IL 60606
(312) 569-1000

James H. Millar
Kristin K. Going
Frank F. Velocci
1177 Avenue of the Americas, 41st Floor
New York, NY 10036-2714
(212) 248-3140

*Counsel for Appellees Relative Value-
Long/Short Debt Portfolio, a Series of
Underlying Funds Trust, and Trilogy
Portfolio Company, LLC*

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF DIVISION
EASTERN DIVISION

CAESARS ENTERTAINMENT OPERATING)
COMPANY, INC., et al.,)
Plaintiff,) No. 15 A 00149
vs.)
BOKF, N.A., et al.,) Chicago, Illinois
Defendants.) June 3, 2015
10:30 a.m.
1:15 p.m.
-----)
CAESARS ENTERTAINMENT OPERATING)
COMPANY, INC., et al.,) No. 15 B 01145
Debtors.)

TRANSCRIPT OF PROCEEDINGS BEFORE THE
HONORABLE A. BENJAMIN GOLDGAR

APPEARANCES:

For the Plaintiff: Mr. David Zott;
Mr. Jeffrey Zeiger;
Mr. Judson Brown;
For Wilmington Savings Fund: Mr. James Johnston;
Mr. Geoffrey Stewart;
Mr. Joshua Mester;
For BOKF: Mr. Michael Cryan;
For Frederick Barton Danner: Mr. Gordon Novod;
For MeehanCombs: Mr. Frank Velocci;

I N D E X

<u>Witness:</u>	<u>DX</u>	<u>CX</u>	<u>REDX</u>	<u>RECX</u>
James Millstein	23	74	135	157
		118	142	158
		121	143	
		122	151	
			152	
Steven Zelin	160			

1 A Yeah. I mean, I think in my 30-odd years
2 of doing this, I think I've been involved in a
3 handful of real cram-down cases. Most of the -- most
4 cases ultimately become consensual. But the question
5 is how long does it take. And the advantage of a
6 restructuring support agreement or, you know, some
7 kind of a prepetition agreement among the debtor and
8 its creditors, is that it helps to shorten and focus
9 the disputes that need to be resolved in the case.

10 Q And what are the advantages of shortening
11 and focusing disputes in bankruptcy?

12 A It has the salutary effect of minimizing
13 the administrative expenses and of avoiding
14 unnecessarily burdening the court, frankly, with
15 disputes that can be resolved consensually.

16 Q Now, is it your expectation that the debtor
17 will seek to confirm the RSA in its current form?

18 A I'm not sure I understand your question.

19 Q Well, do you believe that the RSA, as it
20 stands today, is the final version that this debtor
21 is ultimately going to go and try to submit for
22 confirmation down the line?

23 A No. I mean, based on my own direct
24 experience in the last two-plus months that we've
25 been involved in the case, it is serving the purpose

1 of a framework for negotiations, but negotiations are
2 ongoing. And I expect that there will be changes to
3 the RSA over the course of the next few months.

4 Q And I think you testified earlier that that
5 process and negotiations are occurring even in this
6 time frame?

7 A Yes.

8 Q And are you involved in that?

9 A I am.

10 Q And you also testified earlier, I believe,
11 that the RSA does provide for a substantial
12 contribution from CEC on account of the debtors'
13 claims?

14 A Yes.

15 Q Have you actually had the opportunity, you
16 and your team, to independently value that
17 contribution?

18 A The governance committee, the board, has
19 asked us to do that, and that is something that we
20 are ongoing -- an ongoing project of ours. It's in
21 part a little bit of a moving target because some of
22 the contributions are still -- the form of those
23 contributions is still the subject of some
24 negotiation.

25 Q Is there any doubt that even in its correct

1 form, CEC's contribution is a substantial one?

2 A Yes.

3 Q I said is there any doubt?

4 A No, there is no doubt. I mean, their
5 contribution, is -- as currently structured, there
6 are three primary contributions that CEC is making.
7 It is providing the estate with \$406 million worth of
8 cash. It is providing a backstop to the value of the
9 equity that's being proposed to be distributed under
10 the plan in two different entities. And it is
11 providing credit support for a REIT structure through
12 the form of a lease guarantee.

13 So those -- and that credit support
14 should enable the entire capital structure to trade
15 at a higher valuation than it might otherwise trade
16 on a post-confirmation basis.

17 So those three buckets, cash, lease
18 guarantee, and a backstop on the valuation of the
19 equity of the PropCo and OpCo incorporated into this
20 REIT structure are substantial contributions by the
21 parent in -- made in anticipated settlement of the
22 claims against it.

23 Q And are you also exploring -- is the
24 debtor -- are the debtors exploring any other
25 alternatives to the RSA in order to reorganize?

1 A Well, as I said, there are ongoing
2 negotiations with both -- with parties who are not a
3 party to the RSA, creditor groups who are not parties
4 to the RSA, to attempt to induce them to become
5 parties to the RSA.

6 But, in addition, we have been asked
7 as a matter of prudence planning to consider possible
8 alternatives to the RSA, if it proves to be a
9 structure that at the end of the day does not enlist
10 broad creditor support. So we've started to think
11 about other approaches.

12 And I would say that sort of
13 incidental or related to the plan contemplated by the
14 RSA, we have also undertaken to begin the process of
15 potentially doing a market test of the values
16 provided to creditors under the RSA.

17 Just to take a little digression here,
18 one of the three forms of support being provided by
19 the parent company to the debtors' reorganization
20 under the RSA is a backstop on the equity values,
21 which is to say that creditors are being -- the
22 creditors who receive equity under the plan are being
23 afforded the right to put that equity to the parent
24 at a price.

25 And so the question raised is is that

1 recoveries.

2 Q Okay. And have you also negotiated with
3 the creditors, including with the first lien notes in
4 this case?

5 A Yes.

6 Q Okay. And you mentioned that the --
7 currently the first lien notes have agreed to the
8 RSA?

9 A Yes.

10 Q And you also mentioned that the first lien
11 notes have a -- they at least had a guarantee that
12 would guarantee 6.345 billion of their debt?

13 A That's correct.

14 Q And they're not currently pursuing that in
15 the guarantee litigation?

16 A They are not.

17 Q From a pure question of economic incentive,
18 are there any reasons that you're aware of as to why
19 the first lien noteholders would be incentivized to
20 join the litigation if it proceeds?

21 A So this is the fundamental problem that the
22 estate faces and the creditors face in treating --
23 with a possibility of a plan of reorganization: Do
24 they seek to pursue their separate claims against CEC
25 or do they allow the estate to bring the value -- the

1 value obtainable from CEC into the equation, and to
2 provide for that value and distribute it under a CEC
3 plan of reorganization?

4 To date, the first lien noteholders
5 have, obviously, by signing the RSA, determined to do
6 it through the estate. But if the -- if there's
7 going to be a separate effort to collect value from
8 CEC through the guarantee litigation, they have every
9 economic incentive to join it, because under the RSA,
10 they are not unimpaired. They remain impaired.
11 They're not getting a full recovery on their claims.
12 And so if the guarantee litigation is permitted to be
13 pursued, then I expect that the first lien notes will
14 join that party so as to prevent them from being
15 jumped by a set of junior creditors with respect to a
16 valuable estate asset.

17 Q And if the first lien noteholders join that
18 party, in your words, what effect would that have on
19 the debtors' ability to achieve a consensual
20 restructuring in this bankruptcy?

21 A Well, I think the -- I think we'll be in
22 the -- we'll be in a much different situation,
23 because I think if the litigations are pursued and
24 they ripen into a judgment, you will have -- in other
25 words, if the guarantees are reinstated, then the --

1 So the franchise is valuable. We can
2 provide a distribution to creditors under a plan of
3 reorganization based on the franchise itself. And
4 whether it's done pursuant to the structure
5 contemplated by the RSA or through another structure
6 that may be negotiated consensually with the
7 creditors, I'm confident that the creditors will find
8 a way, despite their various differences with one
9 another and with CEC, they'll find a way to make sure
10 they don't dissipate the value of the franchise.

11 THE COURT: Why doesn't an agreement
12 like the RSA cause problems? Why doesn't it result
13 in parties who feel they aren't getting enough under
14 an agreement like that, and I dare say that there are
15 some parties like that in this case, why doesn't that
16 harden their positions and cause them to be
17 especially aggressive?

18 THE WITNESS: In my experience in
19 negotiating in a complicated case like this, parties
20 often have, you know, unformed views and uninformed
21 views as to what's available and what can be
22 obtained. And so the value of an RSA is actually in
23 crystallizing a framework for a negotiation. So the
24 creditors look at absolute recovery and relative
25 recovery. And an RSA is a very useful device to get

1 creditors to focus on a relative recovery and
2 absolute recovery both.

3 And it -- I think particularly in this
4 case, one has to view it as a work in process. It's
5 a way of saying this group of creditors is prepared
6 to agree to compromise on this basis, and it forces
7 other creditors to consider what they would
8 compromise.

9 And as I said earlier in my testimony,
10 it's having exactly that effect. We have other
11 creditor constituencies who are now looking at the
12 RSA and saying well, that doesn't work for me. I
13 need this. And so it's an iterative process. We
14 have to start somewhere.

15 THE COURT: So in your view then it's
16 not so much the fact that some creditor groups do
17 better under the RSA than others, but, rather, the
18 ones who are doing better for now have compromised;
19 they've accepted less and that sends a message, is
20 that what you're saying?

21 THE WITNESS: Well, no. I mean, at
22 the end of the day, the relative priority under the
23 Bankruptcy Code of different creditor claims will --
24 that's the framework that ultimately needs to be
25 respected. If you've designed a plan of

1 member of the capital structure compromises under an
2 RSA, does that in and of itself have any salutary
3 effect on trying to, you know, achieve a broader
4 consensus with the more junior members?

5 A Yes. I mean, the one way to look at the
6 RSA is that the connotative treatment of the first
7 lien secured creditors that leaves them impaired,
8 together with the contributions being made by CEC
9 itself, are trying to create value for junior
10 creditors that will induce them to compromise, and
11 support the plan.

12 I think what all of this represents is
13 that there -- a pretty clear position of junior
14 creditors that it's not enough. But that's what
15 bankruptcy is for. I mean, that's what we're here to
16 do. We're here to have an honest conversation about
17 the value of the company, the value of the claims,
18 and try to determine an equitable allocation of that
19 value among the creditors based on their relative
20 priorities, based on the contractual relationships
21 they established with the debtor, and between
22 themselves prior to the commencement of the case.
23 That's what we're doing here.

24 Q And why do you believe continuation of the
25 guarantee litigation would disrupt that process?

1 A Well, because the allegedly guaranteed
2 parties are trying to jump the line. They're trying
3 to -- they're trying to alter the priorities that
4 would otherwise prevail in the bankruptcy, and to
5 compete with the debtors' claims against CEC arising
6 out of many of the same transactions of which they're
7 a litigant.

8 THE COURT: Isn't that what guarantees
9 are for? This is why people get them.

10 THE WITNESS: Yeah, that's right.

11 THE COURT: So...

12 THE WITNESS: That's right. But
13 the -- there is a more -- there is a more complicated
14 conversation about that. At the time these
15 guarantees were given, there was nothing in CEC. The
16 value that sits in CEC really resided in CEOC. The
17 value that could be obtained today came from the
18 debtors.

19 And so if we recovered our fraudulent
20 transfers, if there are fraudulent -- if there are --
21 if they really were fraudulent transfers, the
22 guarantees would be of absolutely no value to these
23 parties because at the time the guarantees were given
24 it was a holding company. It had nothing in it other
25 than the equity in CEOC. And it's only through a

1 series of transactions, which the estate is asserting
2 or could assert that CEC has independent value to
3 those guarantee claims.

4 So what these creditors are trying to
5 do is compete with fraudulent conveyance claims that
6 the estate has, and be a beneficiary of those
7 fraudulent conveyance claims by seeking a separate
8 recovery on their guarantees. And in that sense,
9 they're jumping the line. If they're successful,
10 they're jumping the line and getting ahead of the
11 estate, and, therefore, really interfering with the
12 priorities it would otherwise obtain in the
13 bankruptcy.

14 BY MR. ZOTT:

15 Q There were arguments made in some of the
16 briefs, Mr. Millstein, saying that if you allow the
17 litigation to continue, you actually encourage the
18 parties to try to come to a consensual deal,
19 otherwise CEC will be able to, quote, luxuriate in a
20 pressure-free environment.

21 Do you agree with that perspective?

22 A My experience of CEC today in this
23 environment is that they are not luxuriating. They
24 are under enormous pressure from all of the creditor
25 constituencies and from the debtors from the pendency

1 of the proceeding. It's a life or death struggle for
2 them at this point to resolve these cases
3 consensually.

4 And I think that's -- that is obvious
5 from the -- just a comparison of the potential
6 contingent claims against them through the guarantees
7 and on the fraudulent conveyance litigation compared
8 to the value of their assets as reflected in the
9 market value of their equity. And there's no way
10 they can satisfy all of these claims. And so
11 they need -- and in the absence of their ability to
12 come to a consensual resolution of these claims
13 through this proceeding, they are going to be a
14 debtor in this courtroom.

15 Q You mentioned -- when we first met and
16 started preparing, you mentioned a John Lennon song.
17 Do you remember the song?

18 A Which one? Give Peace a Chance?

19 THE COURT: Imagine all the people
20 living life --

21 (Laughter.)

22 BY MR. ZOTT:

23 Q I think he got it right.

24 What was the song?

25 A Give Peace a Chance.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CAESARS ENTERTAINMENT OPERATING
COMPANY, INC., et al.,

Plaintiffs-Appellants,

vs.

BOKF, N.A., et al.,

Defendants-Appellees.

No. 15 C 6504

Chicago, Illinois
September 29, 2015
10:00 a.m.

TRANSCRIPT OF PROCEEDINGS - HEARING

BEFORE THE HONORABLE ROBERT W. GETTLEMAN

APPEARANCES:

For the Plaintiffs-
Appellants:

KIRKLAND & ELLIS LLP
BY: MR. DAVID R. SELIGMAN
300 North LaSalle Street
Chicago, Illinois 60654
(312) 862-2000

KIRKLAND & ELLIS LLP
BY: MR. JOHN C. O'QUINN
MR. JASON M. WILCOX
655 15th Street, N.W.
Washington, D.C. 20005
(202) 879-5000

Official Court Reporter: NANCY L. BISTANY, CSR, RPR, FCRR
219 South Dearborn Street, Room 1706
Chicago, Illinois 60604
(312) 435-7626
nancy_bistany@ilnd.uscourts.gov

1 APPEARANCES: (Continued)

2 For Defendant-
3 Appellee Wilmington
4 Savings Fund:JONES DAY
BY: MR. JAMES O. JOHNSTON
MR. BRUCE BENNETT
555 South Flower Street, 50th Floor
Los Angeles, California 90017
(213) 489-39396 JONES DAY
7 BY: MR. MORGAN R. HIRST
77 West Wacker Drive, Suite 3500
Chicago, Illinois 60601-1692
(312) 782-39399 For Defendant-
10 Appellees MeehanCombs
11 and Trilogy:DRINKER BIDDLE & REATH LLP
BY: MS. KRISTIN K. GOING
1177 Avenue of the Americas
41st Floor
New York, New York 10036-2714
(212) 248-314013 For Defendant-
14 Appellee Danner:GRANT & EISENHOFER P.A.
BY: MR. GORDON Z. NOVOD
485 Lexington Avenue, 29th Floor
New York, New York 10017
(646) 722-8500

1 The reasons to do it here are twofold. Number one,
2 because time is of the essence. We do have a race to judgment.
3 And while this other action is pending, yeah, that's a cloud
4 that looms over the bankruptcy proceeding. And the whole
5 point, again, of having the injunction is to hopefully try to
6 build consensus to provide a cooling-off period in which people
7 can see the information from the examiner, assess it for
8 themselves, and then see whether or not there's a plan to be
9 agreed to.

10 But second, when you get past the issue of authority,
11 respectfully, I don't think there are any fact issues that are
12 really left to be adjudicated, because the test that's been
13 identified by the Third -- by the Seventh Circuit essentially
14 has three parts to it.

15 Number one, does it affect the integrity of the
16 bankruptcy estate? And it assuredly does for the reasons that
17 I've just been talking about.

18 Number two, is there a likelihood of a successful
19 reorganization? I don't even think that that issue is being
20 disputed here. Part of the arguments that the appellees have
21 made is you could potentially have a successful reorganization
22 even without the contribution from CEC. So they can't have it
23 both ways and then say, well, we're going to argue that there's
24 no likelihood of a successful reorganization here.

25 And on the facts, when their expert was asked at the

1 trial, you know, did he agree with certain things about --
2 about the debtors' ongoing business and whether or not, you
3 know, they had good brand recognition, good EBITDA, et cetera,
4 he agreed. So there weren't any disputes about that.

5 And that was the only witness that they had at trial.
6 They didn't call any fact witnesses. There are no credibility
7 determinations to be made here on remand.

8 The last factor that leaves is the public interest
9 factor. And with respect to the public interests, cases like
10 *In re Gander Associates, Paul Glenn* recognize that a successful
11 reorganization is always in the public interest, number one.

12 Number two, certainly fostering settlement is in the
13 public interest. And, again, the whole purpose of having a
14 temporary injunction to span 60 days beyond the time of the
15 examiner's report is to try to foster just that.

16 And then three -- and I mentioned this before -- they
17 don't identify any harm to them that would raise public
18 interest concerns about why their actions should be allowed to
19 proceed other than to say, well, perhaps our claims would
20 potentially be eliminated if a plan is confirmed. But, again,
21 that's not a reason to not grant an injunction. That's a
22 reason to litigate in the bankruptcy proceeding about what the
23 plan of confirmation -- the plan proposed for confirmation
24 should look like.

25 THE COURT: And just explain to me again, how would

1 bankruptcy is supposed to be the main event where those types
2 of issues are being adjudicated, not third-party litigation.

3 The second thing, though, that would happen is, you
4 know, there was certainly -- certainly testimony that -- at
5 trial that that creates a situation where CEC itself might
6 enter into bankruptcy and might make it impossible, therefore,
7 to be able to have a reorganization here, certainly not one
8 that involved a contribution from -- from CEC. And you can
9 find this at the record at A1021 and A1073 to 1074. Mr. Zelin,
10 the financial advisor to CEC, said that bankruptcy would be a
11 real option.

12 And, again, I think it's undisputed that the claims
13 against CEC are one of two primary assets that the estate --

14 THE COURT: But you're only seeking a temporary stay,
15 so that could happen anyway. So if that possibility is there
16 that might force CEC into bankruptcy, maybe that's the best
17 thing, to put these all in one big bankruptcy proceeding and
18 make all these decisions at one time.

19 MR. O'QUINN: Well --

20 THE COURT: But I don't see a temporary stay as
21 avoiding that decision by CEC or its advisor, or whatever, as
22 to whether or not they've got so many claims against it, they
23 might as well just file a Chapter 11 or worse.

24 MR. O'QUINN: So, Judge Gettleman, what you have at
25 the moment is a proposal in which there would be a settlement

1 of claims against CEC. That's been valued by the debtors at
2 approximately 2 -- being worth approximately \$2 billion. One
3 of the virtues of having the injunction that's being sought, in
4 order to allow the examiner to make an assessment of what those
5 claims are worth, is so that all of the parties here that are
6 stakeholders can have an independent assessment of what those
7 are.

8 I mean, the guaranty-plaintiffs have asserted that
9 that's essentially a sweetheart deal between the debtors and
10 CEC. The examiner's report may very well put the lie to that.
11 And if it does, that may very well give rise to the kind of
12 consensus that the bankruptcy process is intended to foster
13 that would lead to resolution. That's the reason for the
14 temporary -- the request for the temporary injunction.

15 And as for the scenario where CEC itself ends in
16 bankruptcy, then you end up with what Mr. Millstein testified
17 as one of the great messes of our time, where you have the
18 debtors with claims against another debtor, and then you have a
19 fight about who gets priority and where those things go. And
20 you could have a very long, messy, protracted bankruptcy, which
21 is not in the interest of anybody, including the
22 guaranty-plaintiffs.

23 THE COURT: Okay.

24 MR. O'QUINN: I'm happy to answer other questions
25 that the Court may have, whether it relates to the cases

UNITED STATES COURT OF APPEALS SEVENTH CIRCUIT

IN RE: CEASARS ENTERTAINMENT
OPERATING COMPANY, INC., et al.,

Debtors.

CEASARS ENTERTAINMENT OPERATING
COMPANY, INC., et al.,

Plaintiffs-Appellants,

vs.

No. 15-3259

BOKF, N.A., et al.,

Defendants-Appellees.

Transcription of digitally recorded
proceedings in the above-captioned matter,
transcribed by LAURA M. O'BRIEN, Certified
Shorthand Reporter of the State of Illinois.

Judge Daniel A. Manion
Judge Richard A. Posner
Judge Diane S. Sykes

REPORTED BY: Laura M. O'Brien, CSR, RPR, CRR
LICENSE NO.: 084-004259
JOB NO.: 7186

1 JUDGE POSNER: Well, why would it be better
2 to have the -- to have the decisions by the
3 State Courts and maybe the Federal Court in
4 New York before an effort is made to wind up the
5 bankruptcy?

6 MR. O'QUINN: Well, Judge Posner, the
7 testimony at trial and the representations made
8 by CEC in its public filings is that if it's
9 adjudicated to be liable for the guaranty
10 claims, it's going to enter into bankruptcy.
11 And if it does, it's not then in a position to
12 be able to make a contribution to the debtors'
13 estates in settlement of the debtors' claims.
14 And the type of consensual reorganization that
15 is hoped for here simply won't be able to be
16 achieved.

17 And so that's -- that is why it
18 threatens the integrity of the bankruptcy
19 estate. No one is talking about extinguishing
20 their claims for all time. The point of this is
21 a temporary injunction of -- or a temporary stay
22 of the ongoing litigation. But it's to prevent
23 the harm to the debtors, namely that one of the
24 principal assets around which they are hoping to

1 reorganize will essentially not be available to
2 them, because CEC itself would be in bankruptcy.

3 JUDGE MANION: Well, CEC, is it because it's
4 not a party and somehow or other, I don't know
5 how, it extracted the -- we call them the good
6 Ceasars?

7 MR. O'QUINN: Well, that's the way that I
8 think the plaintiffs have --

9 JUDGE MANION: It seems to be the big issue
10 is CEC took out the good Ceasars, as you -- I
11 think somebody calls them, and then left the
12 other ones that aren't very good, and that's
13 where the problem with the -- all parties is
14 they're not -- they're worried about getting
15 those back into the mix, I presume.

16 MR. O'QUINN: That -- I think that's right,
17 Judge Manion. And here's the key point. If the
18 assets that the debtors allege were fraudulently
19 transferred from them to CEC, if they were with
20 the debtors, then the guaranty plaintiffs would
21 be second and lower tier creditors to try to
22 recover in a bankruptcy. But instead, they're
23 doing an end run around the bankruptcy process,
24 essentially trying to jump the line, because

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CAESARS ENTERTAINMENT OPERATING)	
COMPANY, INC.,)	
	)	No. 15 A 00149
Plaintiff,)	
)	
vs.)	
)	
BOKF, N.A., ET AL.,	)	Chicago, Illinois
	)	February 3, 2016
Defendant.	)	11:00 a.m.
-----)	
)	
CAESARS ENTERTAINMENT OPERATING)	
COMPANY, INC.,	)	No. 15 B 01145
)	
Debtor.)	

TRANSCRIPT OF PROCEEDINGS BEFORE THE
HONORABLE A. BENJAMIN GOLDGAR

APPEARANCES:

For the Debtors:	Mr. David Zott;
For the U.S. Trustee:	Ms. Denise DeLaurent;
For BOKF:	Mr. Mark Hebbeln;
For Relative Value and Trilogy:	Ms. Kristin Going;
For the Second-Priority Noteholders:	Mr. Geoffrey Stewart;
Court Reporter:	Amy Doolin, CSR, RPR U.S. Courthouse 219 South Dearborn Room 661 Chicago, IL 60604.

1 THE COURT: They are here.

2 MR. TOOF: Good morning, Your Honor.

3 Jackson Toof, Arent Fox, on behalf of BOKF.

4 Mr. Hebbeln is in the courtroom.

5 THE COURT: Yes. Good morning. Okay.

6 I think that's it.

7 The mandate, as I was saying, issued
8 yesterday. So this is back in my lap. So I guess my
9 only question really is timing.

10 Obviously, the Court of Appeals had a
11 different view of its case law than I did, and so
12 apparently I have the power to grant the injunction,
13 should I find that the facts warrant it. And they
14 said that it was up to me, not surprisingly, to make
15 the factual determination.

16 It was a little hard for me to
17 decipher the docket in the New York cases, but I had
18 the impression there was a trial date -- the earliest
19 trial date was either March 9 or March 14.

20 MR. ZOTT: Yes, Your Honor. The first
21 trial -- this is David Zott on behalf of the debtors.
22 The first trial is set for March 14th.

23 THE COURT: Okay.

24 MR. ZOTT: And that would be a trial
25 of UMB and BOKF, who have collective claims of \$7

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CAESARS ENTERTAINMENT OPERATING)	
COMPANY, INC.,)	
Plaintiff,)	No. 15 A 00149
vs.)	
BOKF, N.A., ET AL.,)	Chicago, Illinois
Defendants.)	June 8, 2016
-----)	10:30 a.m.
CAESARS ENTERTAINMENT OPERATING)	2:00 p.m.
COMPANY, INC.,)	
Debtor.)	No. 15 B 01145

VOLUME I (Pages 1-184)

TRANSCRIPT OF PROCEEDINGS BEFORE THE
HONORABLE A. BENJAMIN GOLDGAR

APPEARANCES:

For the Plaintiff:	Mr. David Zott; Mr. Jeffrey Zeiger; Mr. David Seligman;
For WSFS:	Mr. Bruce Bennett; Mr. James Johnston;
For BOKF, N.A.:	Mr. Jackson Toof;
For Trilogy:	Mr. Frank Velocci; Ms. Kristin Going; Mr. James Millar
For the Danner Defendants:	Mr. Edmund Aronowitz;

I N D E X

<u>Witness:</u>	<u>DX</u>	<u>CX</u>	<u>REDX</u>	<u>RECX</u>
James Millstein	24	57		
David Seligman	111	118	127	132
		126	134	137
Steven Pesner	139			
Barry Kupferberg	148	156		

1 BY MR. ZOTT:

2 Q Are you aware that the court has entered
3 an injunction, just to get you focused, that
4 temporarily stayed the guaranty litigation, a portion
5 of that?

6 A Yes.

7 Q And I would like you, sir, to describe for
8 the court the progress, if any, that the debtors have
9 made with respect to a plan since that injunction was
10 entered.

11 A Well, as I think the court is aware after
12 yesterday's hearing, substantial progress has been
13 made towards a -- not quite yet fully consensual
14 plan, but substantially consensual plan.

15 As described in the disclosure
16 statement, and I think as affirmed by the parties at
17 yesterday's hearing, the debtors have entered into a
18 restructuring support agreement with their parent
19 company, CEC, that describes and governs the nature
20 of the contributions they would make to this case to
21 settle claims against them.

22 We have an agreement in principle with
23 the official unsecured creditors committee with
24 regard to the treatment of unsecured creditors under
25 the plan.

1 We have, if not an executed RSA, soon
2 to be, I hope, executed RSA, but certainly an
3 agreement in principle with the first lien
4 noteholders. And then an agreement with one of the
5 subgroups of unsecured creditors called the
6 subsidiary guaranty notes.

7 That leaves out among the major
8 creditor groups, the first lien banks, with whom -- I
9 guess the best way to say it is they have -- under
10 the revised plan, the recovery that they would
11 receive under the revised plan is greater than that
12 which they had previously agreed to, but they are
13 continuing to negotiate with the debtors for improved
14 recoveries.

15 And the 2L, or the second lien
16 noteholders, I guess who are the plaintiffs in many
17 of the, you know, proceedings here that have been
18 sought to be enjoined or restrained temporarily.

19 Q Okay. Well, let me talk about the second
20 lien noteholders then. The plaintiffs, as you
21 mentioned, in many of the injunction proceedings --
22 or many of the guaranty actions.

23 First, during the injunction period,
24 has you and your team -- have you and your team had
25 any meetings or discussions with representatives of

1 the noteholders?

2 A Yes, both with representatives of the
3 noteholders and with individual noteholders, members
4 of the committee and other noteholders who are not on
5 the committee.

6 Q And did that include substantive
7 discussions about efforts to try to resolve the case
8 and their claims?

9 A Yes.

10 Q Now, did you see the mediator statement
11 that was submitted to the judge yesterday about the
12 actual mediation process in terms of meetings between
13 CEC and the noteholders?

14 A Yes.

15 Q Okay. And let me ask you, is it unusual,
16 in your experience, for progress in a bankruptcy to
17 vary among the various creditor groups?

18 A Yeah. I mean, in a case as complicated as
19 this where you have, you know, first lien banks and
20 noteholders separately organized, and then an
21 official unsecured creditors committee that
22 represents a variety of different kinds of unsecured
23 creditors, noteholders to trade creditors, and where
24 the second lien noteholder group are plaintiffs in
25 other causes of action outside the case, as well as

1 non-plaintiffs, as well as a very sophisticated group
2 of individual noteholders who are not shy about
3 representing their own position regardless of what
4 the 2L committee may assert from time to time, there
5 are -- there's a different pace of negotiation with
6 each group.

7 And the interesting and obvious
8 dynamic of this case also needs to be taken note of,
9 which is that while CEC, the parent company, has from
10 time to time inserted itself directly into plan
11 negotiations with individual creditor groups, the
12 debtors are the debtors, and we have also a duty to
13 try to move these cases forward, and have been
14 negotiating both with CEC for the terms of their
15 contribution, as well as with each of the individual
16 creditor groups.

17 So the mediator -- what I'm saying,
18 the mediator statement was really referencing only
19 conversations, direct conversations between CEC and
20 the 2Ls. There have been a host of conversations
21 between the debtors and individual 2L noteholders,
22 and the 2L representatives of 2L committee ongoing
23 during this period.

24 And we think, frankly, that we have --
25 we have advanced the ball in getting closer to a

1 consensual deal between at least the debtors and the
2 2L committee.

3 Q Okay.

4 A But by no means -- I'm sure that the
5 representatives of the 2L committee will tell you the
6 ball hasn't nearly been advanced enough. But it has
7 moved down the field quite considerably.

8 And one needs to take notice that the
9 first plan that was filed had a recovery level that
10 is at half the level, 50 percent of the level that
11 the new plan provides for the 2Ls. So while the 2Ls
12 want more, without question, and remain unsatisfied,
13 they have through this plan negotiation process
14 already doubled their potential recoveries.

15 Q And is it fair to say more work needs to be
16 done?

17 A Oh, yeah.

18 Q And are the debtors, are they giving up or
19 are they committed to continuing to negotiate?

20 A No. We're -- we are continuing to have
21 conversations with members of the committee and
22 non-members of the committee.

23 Q And you mentioned that there are here
24 either deals in principle, signed RSAs, or very close
25 with some of the other creditor groups. So what does

1 that allow the debtor to do in terms of actually
2 focusing its attention with respect to the
3 noteholders going forward?

4 A As I said earlier, I think we really have
5 two major groups that remain unreconciled to the plan
6 that is on file, that being the first lien banks and
7 the second lien noteholders. And in truth, their
8 recoveries are related or interrelated.

9 Q Could you explain that.

10 A Yes. Because the -- they are -- they share
11 collateral with the 2L notes, having agreed
12 contractually to subordinate their liens to the 1L
13 notes and banks. So the satisfaction of the claims
14 of the 1L banks and the 1L notes is -- the prior
15 satisfaction of claims of the 1L notes and 1L banks
16 is something to which the 2Ls are a party as a result
17 of a prepetition subordination agreement.

18 And so if you view -- if you view
19 the estate as a limited sum, potentially supplemented
20 by contributions from CEC as the parent in settlement
21 of its claims, the 2Ls need to -- the 2L's recoveries
22 are dependent on the satisfaction, the prior payment
23 in full in satisfaction of the 1L banks and bonds.

24 So we have the 1L notes on side,
25 having agreed to a set of recoveries that they say

1 allows value to accrue to the 2Ls. The banks aren't
2 there yet. The banks continue to seek more value,
3 and that is value that otherwise might go to the 2Ls.

4 Q Okay. Well, we're going to come back to
5 that point a little later. But let me turn to the
6 contribution that CEC is making under the current
7 plan.

8 Are you generally familiar with the
9 contribution?

10 A Yes.

11 Q And have you and your team valued it?

12 A Yes, we have.

13 MR. BENNETT: Your Honor, I want to
14 object to the relevance of this line of questioning,
15 only because when I read your order, you focused on
16 the negotiations, not on the value of the
17 contribution last time. I think this can go a lot
18 quicker if this isn't about the value of the
19 contribution. If it is about the value of the
20 contribution, there is going to be a significant
21 cross-examination of Mr. Millstein on it, and it's a
22 huge part of our case.

23 MR. ZOTT: Let me try it a different
24 way. I sort of agree with Mr. Bennett, so let me try
25 it a different way.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CAESARS ENTERTAINMENT OPERATING)
COMPANY, INC., et al.,) No. 15 B 01145
) Chicago, Illinois
) 1:30 p.m.
Debtor.) August 17, 2016

TRANSCRIPT OF PROCEEDINGS BEFORE THE
HONORABLE A. BENJAMIN GOLDGAR

APPEARANCES:

For the Debtors: Mr. David Zott;
Mr. Jeffrey Zeiger;
Mr. Joseph Graham;
Mr. Brent Rogers;
Mr. Bill Arnault;
For the U.S. Trustee: Ms. Denise DeLaurent;
Mr. Adam Brief;
For the Noteholder Committee: Mr. James Johnston;
For the 10.75 Notes Trustee: Mr. Jason Zakia;
For FERG, LLC and LLTQ
Enterprises: Mr. Steven Chaiken;
For BOKF: Mr. Andrew Silfen;

Court Reporter: Amy Doolin, CSR, RPR
U.S. Courthouse
219 South Dearborn
Room 661
Chicago, IL 60604.

1 MR. ARNAULT: Thanks, Your Honor.

2 MR. CHAIKEN: Thank you, Your Honor.

3 THE COURT: Thank you.

4 MR. ZEIGER: Good afternoon, Your
5 Honor. Jeffrey Zeiger, Kirkland & Ellis, on behalf
6 of the debtors.

7 Your Honor, we're here on the debtors'
8 motion for a protective order with respect to one
9 deposition for the 105 hearing next week.

10 THE COURT: Right. There seems to be
11 some confusion about the issues for the hearing. The
12 issues for the hearing have not changed. The issues
13 for the hearing are the same issues that are
14 described in the court of appeals' opinion.

15 What has changed is the amount of time
16 that has passed. With the passage of time, the
17 burden that the movant has in this situation
18 increases. And the case law is very clear that you
19 can get this kind of injunction at the early stages
20 of the case. We're not exactly at the early stages
21 of the case.

22 So I am not inclined to grant your
23 motion for a protective order. The position that you
24 take on Mr. Stauber really is that he doesn't know
25 anything. Well, that's why you take depositions, to

1 establish that people don't know anything.

2 They don't have to take your word for
3 that. And maybe they'd like to explore that for
4 themselves. And, you know, it's one thing to procure
5 an affidavit from somebody that says that, and it's
6 another thing to extract that from them under the
7 bright lights, you know.

8 So I'm going to grant the motion to
9 compel and deny the motion for a protective order,
10 and have you produce Mr. Stauber.

11 MR. ZEIGER: We will, Your Honor. I
12 understand.

13 To be clear, Mr. Stauber -- our point
14 was Mr. Stauber doesn't know anything that Mr. Hayes
15 doesn't also know. We're making Mr. Hayes available
16 for a deposition.

17 The challenge, Judge, is that
18 obviously this is an accelerated proceeding. And
19 they have committed to, you know, keeping the scope
20 of discovery within essentially the topics that they
21 listed on page 3 of their motion to compel. The
22 concern is that, you know, they've obviously wanted
23 to take discovery of the independent directors on
24 standing. And we kept saying, look, it's going to be
25 duplicative of confirmation.

1 What we don't want to do is these
2 depositions twice. And so I understand the court's
3 order. We will produce him this Friday as scheduled.
4 But our view is that it should be limited to the
5 topics as they set out in their motion.

6 THE COURT: Well, I don't have a
7 problem with the topics limited to matters that are
8 relevant to the hearing. And it doesn't seem to me
9 that most of the matters that pertain to the
10 derivative standing motion, which has now been
11 continued anyway --

12 MR. ZEIGER: Correct.

13 THE COURT: -- are going to be
14 relevant here. But I think Mr. Stauber should be
15 examined.

16 Why am I not going to hear from Mr.
17 Millstein at the hearing? He has been your star
18 witness right along. You know, as time goes on, your
19 case peters out. I was quite surprised to see that I
20 was not going to have a chance to question him.

21 MR. ZEIGER: Your Honor, Mr. Millstein
22 has a similar issue to Mr. Zott, and he can't fly
23 right now. He just had surgery last Friday.

24 THE COURT: Oh, dear.

25 MR. ZEIGER: He's unable to fly.

1 THE COURT: Well, that's too bad.

2 MR. ZEIGER: So that's why Mr. Hayes
3 will be here instead.

4 THE COURT: All right. Well, that
5 will happen, I suppose.

6 I have two comments, though, that I
7 wanted to make in anticipation of the hearing, and I
8 wanted to offer them because these motions suggested
9 some disagreement about the issues with the guaranty
10 plaintiffs, in particular, asserting that the issues
11 have narrowed.

12 And as I said, they haven't. But my
13 comments may give some guidance to the parties in
14 deciding what evidence to present. And I offer these
15 as well for another reason: On the off-chance that
16 they may promote a global settlement in the few days
17 remaining. Never say "never."

18 The first comment concerns the
19 debtors' position that this is a "textbook case" for
20 the issuance of a section 105 injunction. I've
21 agreed with that position in the past, because this
22 is a textbook case - in certain respects. The
23 textbook third-party injunction is issued to stop a
24 lawsuit against a non-debtor who guaranteed one or
25 more of the debtors' obligations, intends to make a

1 financial contribution to the debtors'
2 reorganization, and won't be able to make the
3 contribution if the lawsuit succeeds. Because CEC
4 guaranteed certain of CEOC's obligations and is
5 contributing to its reorganization, and because the
6 lawsuits against CEC arguably jeopardize the
7 contribution, to that extent this case takes textbook
8 form.

9 But in another important respect, this
10 isn't a textbook case. In the textbook case, the
11 third party that the injunction would protect is a
12 person - an actual human being - rather than a
13 corporation. So, for example, a partner in a debtor
14 partnership or an officer or shareholder in a debtor
15 corporation. In the textbook case, no one stands
16 behind the third party and its contribution. A
17 judgment against a third party consequently spells
18 doom for the reorganization. That was true in United
19 Health Care, in Saxby's Coffee, in Rustic, and Lahman
20 Manufacturing, in Otero Mills, in every decision
21 cited in my published opinion after the first hearing
22 except Lyondell. It was true in the R&G Properties
23 case, as well, which was one of mine.

24 It isn't true here. CEC is
25 majority-owned by four LLCs. Two of those LLCs

1 are owned, in turn, by TPG Capital, LP, a large
2 private equity fund. The other two LLCs are owned by
3 Apollo Global Management, LLC, also a large private
4 equity fund. With those entities standing behind
5 CEC, it's hard to argue this is truly the textbook
6 case.

7 That brings me to my second comment.
8 In requesting relief under section 105, the debtors
9 always proceeded under the theory that the denial of
10 an injunction would, as the court of appeals put it,
11 "endanger the success of the bankruptcy proceedings."
12 They reach that conclusion because they contend that
13 successful reorganization depends on CEC's
14 contribution, and that contribution will disappear if
15 CEC loses the guaranty actions.

16 But why should the successful
17 reorganization depend on a contribution from CEC
18 alone? As I just observed, several other entities
19 stand behind CEC. Not only that, but the estates
20 here have claims - large ones the examiner found -
21 against some of these entities, entities that include
22 Apollo and TPG, as well as a host of other companies
23 and individuals.

24 The plan the debtors want to confirm
25 would release those claims. Yet as far as I know,

1 none of those companies and individuals, all of whom
2 would benefit from the proposed release, has
3 contributed so much as a dime under the plan.

4 Certainly, there's been no evidence to date of any
5 contribution. In fact, Mr. Millstein, the debtors'
6 restructuring advisor, from whom apparently we will
7 not hear, testified as recently as this past June
8 that he had not even considered whether these
9 entities could contribute anything. The current
10 motion asserts perfunctorily that "the sponsors" -
11 Apollo and TPG - are participating in settlement
12 discussions, but the motion doesn't describe their
13 participation and gives no indication that it's any
14 better than pro forma.

15 The debtors in these cases are asking
16 the guaranty plaintiffs, all of them creditors of the
17 debtors, to take considerably less than they are
18 owed. The guaranty plaintiffs are miffed at being
19 asked to do that when parties potentially liable to
20 the estates would see the claims against them
21 released under the plan - and would pay nothing for
22 that benefit. They're especially miffed when some of
23 the released parties are the ultimate owners of the
24 Caesars enterprise, the very entities that engineered
25 the leveraged buyout that led to these cases. The

1 guaranty plaintiffs don't see the proposed
2 reorganization here as involving shared pain. I
3 don't blame them.

4 A section 105 injunction is an
5 equitable remedy. To receive equity, the saying
6 goes, one must do equity. Next week, the debtors
7 might well want to show - if it can be shown - what
8 is equitable about stopping the guaranty plaintiffs
9 from enforcing their contractual rights in order to
10 let the debtors confirm a plan under which alleged
11 wrongdoers are released for free.

12 With that, we can move on to the next
13 item. I'll see you Tuesday.

14 MR. JOHNSTON: Your Honor, before we
15 do that, for the record, Jim Johnston of Jones Day on
16 behalf of Wilmington Savings Fund.

17 First, thank you for your comments.
18 That is very helpful for preparing for next week.
19 You will hear more about those issues in our brief on
20 Friday and next week.

21 THE COURT: Good.

22 MR. JOHNSTON: I wanted to raise an
23 issue that just came to my attention this morning,
24 and that has to do with another aspect of the
25 discovery we tendered in connection with the motion,

IN THE UNITED STATES BANKRUPTCY COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE:) No. 15 A 00149
CAESARS ENTERTAINMENT) Chicago, Illinois
OPERATING COMPANY, INC.,) August 23, 2016
) 9:04 a.m.
Debtors.) 1:40 p.m.

VOLUME I (Pages 1 - 399)
TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE A. BENJAMIN GOLDFAR

APPEARANCES:

For the Debtors:	Mr. Jeffrey Zeiger; Mr. David Zott;
For WSFS:	Mr. Bruce Bennett; Mr. Sidney Levinson; Mr. James Johnston;
For Trilogy:	Mr. Frank Velocci;
For the Danner Defendants:	Mr. Gordon Novod;
For 1L Ad Hoc Committee:	Mr. Kenneth Eckstein;
For Wilmington Savings Fund Society and the 10.75 Note Trustee:	Mr. Jason Zakia;
For Official Committee of Unsecured Creditors:	Mr. Paul Possinger;
For Bank Lenders:	Mr. Kenneth Pasquale;
For CEC:	Mr. Thomas Crowley;
For BOKF:	Mr. Jackson Toof
Court Reporters:	AMY M. SPEE, CSR, RPR, CRR JERRI ESTELLE, CSR, RPR United States Courthouse 219 South Dearborn Street Room 661 Chicago, Illinois 60604

I N D E X

WITNESS:

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BRENDAN HAYES

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1 property in Las Vegas.

2 Does that remain true today?

3 A Yes, it does.

4 Q Now, given the strength of the
5 business, why did the debtors file for Chapter 11?

6 A The company had too much debt.

7 Q And what, if anything, have the debtors
8 done during these Chapter 11 cases to address that
9 problem?

10 A We have negotiated with all of the
11 creditor constituencies to significantly reduce
12 the amount of debt on the company on the effective
13 date or post-effective date such that the company
14 has a reasonable amount of debt going forward.

15 Q And if the current plan is ultimately
16 confirmed, approximately how much debt will the
17 debtor shed through this Chapter 11 process?

18 A Approximately 10 billion.

19 Q And from an operational and financial
20 perspective, what is your assessment, if any, as
21 to whether the debtors can successfully
22 reorganize?

23 A I absolutely believe they can
24 successfully reorganize.

25 Q Now, let's turn to progress that the

1 debtors have achieved in this case since the court
2 entered the injunction on June 15, 2016.

3 And let's start with the creditors. If
4 you could turn in your binder, please, sir, to PDX
5 1, Plaintiff's Demonstrative Exhibit 1.

6 MR. ZEIGER: Your Honor, I believe it's
7 in the back of binder.

8 THE COURT: You've numbered your
9 demonstratives separately.

10 MR. ZEIGER: Yes, sir, we have.

11 THE COURT: Okay. Just to be clear.

12 MR. ZEIGER: We have. It should be in
13 the back in Volume 3 of 3 of the plaintiff's
14 exhibits.

15 BY MR. ZEIGER:

16 Q Mr. Hayes, do you have PDX-1 in front
17 of you?

18 A I do.

19 Q And what is Plaintiff's Demonstrative
20 Exhibit 1?

21 A It's a summary of the RSAs that have
22 been entered into in this case.

23 Q And who prepared Plaintiff's
24 Demonstrative Exhibit 1?

25 A Millstein & Company prepared it.

1 Q And were you involved in the
2 preparation of it?

3 A I was.

4 Q And is the information contained on
5 PDX-1 accurate, to the best of your knowledge?

6 A Yes, it is.

7 Q And would referring to Plaintiff's
8 Demonstrative Exhibit 1 assist you in providing
9 your testimony to the court today?

10 A Yes, it would.

11 MR. ZEIGER: Your Honor, at this point,
12 the debtors would move Plaintiff's Demonstrative
13 Exhibit 1 into evidence for demonstrative purposes
14 only.

15 MR. BENNETT: No objection for
16 demonstrative purposes.

17 THE COURT: Plaintiff's Demonstrative 1
18 is admitted.

19 MR. ZEIGER: Thank you, Your Honor.

20 BY MR. ZEIGER:

21 Q Mr. Hayes, if we could start with the
22 top line there in I guess it's red. I think the
23 first two columns, Date of RSA and RSA Effective
24 Date, are somewhat self-explanatory.

25 What does that third column, Estimated

1 Midpoint Recovery Under RSA, refer to?

2 A That refers to based on the Millstein
3 midpoint valuation for the consideration being
4 provided in the plan there are recoveries to the
5 various creditor groups.

6 Q And if you go to the next column,
7 Amount of Claims Supporting Restructuring, what
8 does that refer to?

9 A That's the total amount of claims in
10 each class that have signed on to the RSA.

11 Q And how did you calculate that?

12 A That was based on the signatories to
13 the actual RSAs, plus additional bonds that they
14 had purchased, and in some cases loans.

15 Q Now, where the debtors have support
16 from greater than two-thirds of the class, why
17 didn't you include the whole class?

18 A This is simply the -- the parties that
19 have signed on to the RSA. That's it.

20 Q And if you had included the full class
21 for the classes where the debtors have greater
22 than two-thirds of the class supporting the plan,
23 what would it have done to the numbers?

24 A It would have increased the numbers.

25 Q And if we finish -- or the next column

1 refers to Increase In Recovery Since June 15th,
2 2016. What's reflected in that column?

3 A That's the total dollar amount and
4 percentage increase for each of those classes of
5 recoveries under these various RSAs since June
6 15th.

7 Q And then the final column refers to
8 class claim. What is that?

9 A Those are the total claims as of the
10 petition date for each of these classes.

11 Q Now, there's certain shading on the
12 Plaintiff's Demonstrative Exhibit 1. What does
13 that represent?

14 A The shading represents what has
15 occurred since the June 15th date.

16 Q So if we start with the first row, it
17 refers to 1L bank. Do you see that?

18 A Yes.

19 Q And what is the current status of the
20 debtors' negotiations with the first lien bank
21 debtholders?

22 A We have an effective RSA with first
23 lien banks.

24 Q And when did the debtors reach that RSA
25 with the first lien bank group?

1 A On June 20th.

2 Q Okay. Sir, if you could turn in your
3 first binder to PX-4.

4 Let me know when you're there.

5 A I've got it.

6 Q What is Plaintiff's Exhibit 4?

7 A It is the bank RSA.

8 Q That we were just referring to?

9 A Correct.

10 Q And what was your role, if any, in
11 connection with the negotiation of the bank RSA
12 reflected in PX-4?

13 A Along with a number of other
14 professionals, I helped negotiate the first lien
15 bank RSA.

16 Q And is Plaintiff's Exhibit 4 a true and
17 accurate copy of that RSA that's the result of
18 those negotiations?

19 A Yes, it appears to be so.

20 MR. ZEIGER: Your Honor, the debtors
21 would move Plaintiff's Exhibit 4 into evidence.

22 THE COURT: Any objection?

23 MR. BENNETT: No objection.

24 THE COURT: Plaintiff's 4 is admitted.

25 MR. ZEIGER: Thank you, Your Honor.

1 THE COURT REPORTER: Counsel, can I get
2 your name?

3 MR. BENNETT: Bruce Bennett of Jones
4 Day for the second lien lenders.

5 THE COURT REPORTER: Thank you.
6 BY MR. ZEIGER:

7 Q Mr. Hayes, when did the amended RSA
8 with the first lien bank lenders that we just saw
9 in Plaintiff's Exhibit 4 become effective?

10 A On June 21st, 2016.

11 Q And what is the total amount of the
12 first lien bank debt that's supporting the
13 debtors' restructuring?

14 A \$5.2 billion.

15 Q What are the approximate recoveries to
16 the first lien bank holders under -- first lien
17 bank debtholders under the RSA?

18 A Approximately \$6.3 billion, or 116
19 cents on the dollar.

20 Q Why are the first lien bank debtholders
21 recovering greater than a hundred percent,
22 according to PDX-1?

23 A This is their recovery on a percentage
24 of their petition date claim, and they've accrued
25 post-petition interest.

1 Q So the percentages reflect the
2 percentage of their petition date claim, and
3 additional amounts that have accrued during the
4 Chapter 11 case?

5 A Correct.

6 Q How much have recoveries increased for
7 the first lien bank debtholders since June 15th,
8 2016?

9 A Approximately 60 million.

10 Q And what does that reflect?

11 A That reflects additional payments into
12 we assume to be at 2017 as approximately \$10
13 million a month.

14 Q And what are those in compensation for,
15 if you know?

16 A Additional time for the case to
17 actually proceed and conclude and the accrual of
18 post-petition interest.

19 Q And to the extent that the case goes
20 past June 30, 2017, which we all hope that it does
21 not, but if it does, would there be additional
22 amounts due?

23 A Yes, there would.

24 Q And how much would that be?

25 A \$10 million a month.

1 THE COURT: Let me ask you a question,
2 and I bet you answered this, but Mr. Zeiger
3 blasted through this chart pretty quickly.

4 The 5.2 billion that is shown as the
5 amount of first lien bank claims supporting the
6 restructuring, does that tell us anything about
7 the percentage of first lien banks? It doesn't,
8 does it?

9 THE WITNESS: It does.

10 THE COURT: How?

11 THE WITNESS: So if you look at the 5.2
12 billion --

13 THE COURT: Yes.

14 THE WITNESS: -- that's a percentage of
15 the 5.4 billion, the far right column.

16 THE COURT: Oh, okay. Thank you. I
17 see.

18 THE WITNESS: It's a high percentage,
19 obviously.

20 THE COURT: Yes. Obviously. All
21 right. I understand.

22 Go ahead, Mr. Zeiger.

23 MR. ZEIGER: Thank you, Your Honor.

24 BY MR. ZEIGER:

25 **Q Let's go to the next row, the first**

1 lien notes. What is the current status of the
2 debtors' negotiations with the first lien
3 noteholders?

4 A We continue to negotiate an amended RSA
5 with the first lien noteholders.

6 Q And given your comment that you're
7 seeking an amendment, is there an existing RSA
8 you're seeking to amend?

9 A Yes, there is.

10 Q And when was that entered into?

11 A It was in October of 2015.

12 Q And if you'd turn in your binder, sir,
13 to PX-9. Let me know when you're there.

14 A Okay.

15 Q What is Plaintiff's Exhibit 9?

16 A It's the first lien notes RSA.

17 Q And when was this RSA reached?

18 A In -- or I should say on October 7th,
19 2015.

20 Q And what was your role, if any, in
21 negotiating the RSA set forth in Plaintiff's
22 Exhibit 9?

23 A I negotiated the first lien notes RSA
24 along with a number of other professionals and
25 principals.

1 Q And is Plaintiff's Exhibit 9 a true and
2 accurate copy of the RSA that resulted from those
3 discussions and negotiations?

4 A Yes, it appears to be so.

5 MR. ZEIGER: Your Honor, the debtors
6 would move Plaintiff's Exhibit 9 into evidence.

7 THE COURT: Any objection?

8 MR. BENNETT: No objection.

9 THE COURT: Plaintiff's 9 is admitted.

10 MR. ZEIGER: Thank you, Your Honor.

11 BY MR. ZEIGER:

12 Q Now, sir, what are the recoveries for
13 the first lien noteholders under the current plan
14 that the debtors are seeking to confirm?

15 A Approximately 109 cents on the dollar.

16 Q And that's reflected on the chart under
17 Estimated Midpoint Recovery Under RSA under PDX-1?

18 A That's correct.

19 Q And how do those recoveries generally
20 compare to the recoveries that were contemplated
21 under the October 2015 RSA that we just looked at
22 in Plaintiff's Exhibit 9?

23 A They are approximately 15 points
24 higher.

25 Q So that would put the October 2015

1 recovery somewhere around 94 percent?

2 A In that vicinity, yes.

3 Q And it's now up to 109 percent?

4 A Correct.

5 Q And, again, this exceeds -- at least
6 under the plan, it exceeds a hundred percent of
7 the claim. Why is that?

8 A That's because, similar to the first
9 lien banks, the first lien notes have accrued
10 post-petition interest. So the recovery on a
11 percentage of post-petition interest, accrued
12 claim post-petition is lower.

13 Q If you go to the next column, Amount of
14 Claim Supporting Restructuring, what is the total
15 amount of first lien notes that you've indicated
16 are supporting the restructuring?

17 A \$5.7 billion.

18 Q And why did you include that amount
19 under that column?

20 A Because that includes amounts for
21 parties that signed the RSA, as well as notes that
22 they have purchased.

23 Q And why do the debtors believe that the
24 first lien noteholders are still supporting the
25 RS- -- or the restructuring efforts even though

1 there's no amended RSA?

2 A They continue to negotiate with us.
3 We're very close to reaching an agreement with the
4 first lien notes. We've spent much of the summer
5 negotiating with them and should have something
6 done relatively soon.

7 Q Are you aware that the first lien
8 noteholders have guaranty claims?

9 A Yes, I am.

10 Q And those are being asserted by UMB as
11 indenture trustee?

12 A Yes.

13 Q And did the debtor sue UMB here?

14 A No.

15 Q Why not?

16 A Because UMB is not supporting the
17 guaranty litigation going forward.

18 Q Okay. Let's turn to the next column --
19 or row. It's labeled SGNs. Do you see that?

20 A Yes.

21 Q And what does SGNs refer to?

22 A The subsidiary guaranteed notes.

23 Q And what is the current status of the
24 debtors' negotiations with respect to the
25 subsidiary guaranteed notes?

1 A We have an effective RSA with SGNs.

2 Q And when did the debtors first reach
3 the RSA with the SGNs?

4 A On June 7th, 2016.

5 Q And that was before the last injunction
6 was entered, right?

7 A Correct.

8 Q And when did that RSA become effective?

9 A On June 21st, 2016.

10 Q And that was after the injunction was
11 entered, right?

12 A Correct.

13 Q All right. If you turn in your binder
14 to Plaintiff's Exhibit 1.

15 Are you there?

16 A Yeah.

17 Q What is Plaintiff's Exhibit 1?

18 A It's the SGN RSA.

19 Q And what role, if any, did you have in
20 negotiating the SGN RSA?

21 A Along with a number of other
22 professionals and principals, I negotiated the SGN
23 RSA.

24 Q And is Plaintiff's Exhibit 1 a true and
25 accurate copy of the RSA that was negotiated from

1 **those efforts?**

2 **A Yes, it appears to be so.**

3 MR. ZEIGER: Your Honor, the debtors
4 would move Plaintiff's Exhibit 1 into evidence.

5 THE COURT: Any objection?

6 MR. BENNETT: No objection.

7 THE COURT: Plaintiff's 1 is admitted.

8 MR. ZEIGER: Thank you, Your Honor.

9 BY MR. ZEIGER:

10 **Q If we go back to Plaintiff's**
11 **Demonstrative Exhibit 1, what is the estimated**
12 **recovery for the subsidiary guaranty notes under**
13 **the RSA that we just looked at in Plaintiff's**
14 **Exhibit 1?**

15 **A Approximately 84 cents on the dollar.**

16 **Q And what is the total amount of**
17 **subsidiary guaranteed notes that are supporting**
18 **the restructuring under that RSA?**

19 **A \$351 million.**

20 **Q And for completeness, what is the total**
21 **class claim of the subsidiary guaranty**
22 **noteholders?**

23 **A \$502 million.**

24 **Q And if you want to figure out the**
25 **percentage of subsidiary guaranteed noteholders**

1 **who are supporting the debtors' restructuring, you**
2 **take the 351 as compared to the 502?**

3 **A Yes.**

4 THE COURT: 83 fifths?

5 MR. ZEIGER: That's -- yes.

6 THE COURT: What do you think?

7 MR. ZEIGER: I think that's about
8 right.

9 THE COURT: Okay.

10 MR. ZEIGER: I was an English major, so
11 I hesitate to venture out --

12 THE COURT: Me, too.

13 MR. ZEIGER: -- too far --

14 THE COURT: Isn't it difficult?

15 MR. ZEIGER: It is difficult. I would
16 go about 60, 60-some percent, I think.

17 THE COURT: I didn't venture a
18 percentage.

19 MR. ZEIGER: I worry what the next rows
20 will show, Your Honor. We better not keep this
21 going.

22 BY MR. ZEIGER:

23 **Q All right. The next column refers to**
24 **the UCC. Do you see that, the next row?**

25 **A Yes.**

1 Q And what is the current status of the
2 debtors' negotiations with the unsecured creditors
3 committee?

4 A We have an effective RSA.

5 Q And when did the debtors achieve that
6 RSA that has now become effective?

7 A On June 22nd.

8 Q And it became effective the same day?

9 A Correct.

10 Q All right. If you turn your binder,
11 sir, to Plaintiff's Exhibit 5. Let me know when
12 you're there.

13 A Got it.

14 Q And what is Plaintiff's Exhibit 5?

15 A The UIC -- sorry -- the UCC RSA.

16 Q And what role, if any, did you have in
17 negotiating the UCC RSA?

18 A I negotiated the UCC RSA along with
19 another -- a bunch of other parties.

20 Q And is Plaintiff's Exhibit 5 a true and
21 accurate copy of the UCC RSA, to the best of your
22 knowledge?

23 A Yes.

24 MR. ZEIGER: Your Honor, the debtors
25 move Plaintiff's Exhibit 5 into evidence.

THE COURT: Any objection?

MR. BENNETT: No objection.

THE COURT: Plaintiff's 5 is admitted.

MR. ZEIGER: Thank you, Your Honor.

BY MR. ZEIGER:

Q Now if we go back to Plaintiff's Demonstrative Exhibit 1, the row refers to UCC excluding unsecured notes.

Do you see that?

A Yes, I do.

Q And why does that row exclude the unsecured notes?

A There are certain unsecured noteholders who have different views as to their -- their recoveries, their rights, particularly as it relates to guaranties that have not signed on to the RSA.

Q So what types of creditors are reflected under the UCC row?

A Really general unsecured creditors.

Q Such as trade creditors, for example?

A Correct.

Q And what is the estimated recovery for those general unsecured creditors or trade creditors under the UCC RSA?

1 A Approximately 46 cents on the dollar.

2 Q And you'll see there's an up to
3 159,000,000, 46 percent. Why did you include the
4 words "up to" on that chart?

5 A Because it depended upon ultimately
6 what the claims are.

7 Q Again, there's an amount of claims
8 supporting the restructuring of \$350 million.
9 What does that reflect?

10 A That reflects general unsecured
11 creditors.

12 Q And how did you come up with the 350 as
13 compared to the total class claim amount here?

14 A This is the total -- the total general
15 unsecured creditor claims.

16 Q And why did you include the total for
17 the unsecured creditors as compared to how you've
18 done the other ones?

19 A Because the claims are TBD based on a
20 claims objection, et cetera.

21 Q At this point, has the Official
22 Committee of Unsecured Creditors agreed to support
23 the restructuring?

24 A Yes, they have.

25 THE COURT: You said TBD, meaning to be

1 determined?

2 THE WITNESS: Correct.

3 BY MR. ZEIGER:

4 Q All right. If we go to the next row,
5 there's a reference to Danner. Who is Danner?

6 A Danner is an unsecured noteholder.

7 Q And who does Mr. Danner purport to
8 represent?

9 A Approximately \$110 million face amount
10 of unsecured notes.

11 Q And Mr. Danner is the one who filed the
12 class-action suit in the Southern District of New
13 York on behalf of those noteholders?

14 A That's correct.

15 Q And what is the status of the debtors'
16 negotiations with Mr. Danner?

17 A We have an effective RSA.

18 Q And when did the debtors achieve that
19 effective RSA?

20 A On August 15th.

21 Q And that was after the June 15th
22 injunction?

23 A Correct.

24 Q All right. Sir, if you turn in your
25 Volume 1 of exhibits to Plaintiff's Exhibit 8,

1 **what is Plaintiff's Exhibit 8?**

2 **A This is the Danner RSA.**

3 **Q And is Plaintiff's Exhibit 8 a true and**
4 **accurate copy of the Danner RSA, to the best of**
5 **your knowledge?**

6 **A Yes, it appears to be.**

7 MR. ZEIGER: Your Honor, the debtors
8 would move Plaintiff's Exhibit 8 into evidence.

9 THE COURT: Any objection?

10 MR. BENNETT: No objection.

11 THE COURT: Plaintiff's 8 is admitted.
12 Let me ask you about that claim. That's a
13 class-action. Has the class been certified?

14 THE WITNESS: I'm not sure.

15 THE COURT: How many notes does Mr.
16 Danner himself own?

17 THE WITNESS: Less than 20,000, I
18 believe.

19 THE COURT: \$20,000?

20 THE WITNESS: Correct.

21 THE COURT: So this settlement, does it
22 assume certification?

23 THE WITNESS: It -- it -- I don't
24 believe it assumes certification. It implies
25 certification.

1 THE COURT: I suppose these are legal
2 questions, but I just wonder how he can settle on
3 behalf of an uncertified class, whether that
4 settlement would have to be approved by the
5 District Court. Perhaps the class is certified
6 for purposes of settlement. I haven't done that
7 kind of work in a long time. But you can't answer
8 those questions, can you?

9 THE WITNESS: I can't.

10 THE COURT: Go ahead, Mr. Zeiger.

11 MR. ZEIGER: Your Honor, I may be able
12 to clear that up a little bit on the financial
13 side.

14 THE COURT: Okay.

15 MR. ZEIGER: There may be a way to
16 address that.

17 BY MR. ZEIGER:

18 **Q If you turn, sir, in your binder then**
19 **back one exhibit to Plaintiff's Exhibit 7, what is**
20 **Plaintiff's Exhibit 7?**

21 **A This appears to be the 2L RSA.**

22 **Q Do you have Plaintiff's Exhibit 7 in**
23 **front of you?**

24 **You should still be on the Mr.**
25 **Danner-related document, unless my binder is**

1 **wrong.**

2 **A I'm sorry. I was one off.**

3 THE COURT: My Exhibit 7 is a letter --

4 THE WITNESS: I have it. My apologies.

5 BY MR. ZEIGER:

6 **Q No problem. Okay. Do you have**
7 **Plaintiff's Exhibit 7 in front of you?**

8 **A Yes.**

9 **Q And what is Plaintiff's Exhibit 7?**

10 **A This is a letter from CAC regarding**
11 **CAC's support of the Danner settlement.**

12 **Q And is this a true and accurate copy of**
13 **that letter, to the best of your knowledge?**

14 **A Yes, it is.**

15 MR. ZEIGER: Your Honor, the debtors
16 move Plaintiff's Exhibit 7 into evidence.

17 THE COURT: Any objection?

18 MR. BENNETT: No objection.

19 THE COURT: Plaintiff's 7 is admitted.
20 Just give me a second.

21 MR. ZEIGER: Certainly. And we'll stay
22 with this for a minute.

23 THE COURT: Oh, you had further
24 questions on this exhibit?

25 MR. ZEIGER: I was going to ask Mr.

1 Hayes about Plaintiff's Exhibit 7 to see if we
2 could address the question Your Honor had.

3 THE COURT: Go ahead.

4 MR. ZEIGER: Okay.

5 BY MR. ZEIGER:

6 Q What is your understanding, if any, as
7 to the purpose of this letter agreement between
8 CAC on the one hand and Mr. Danner's counsel on
9 the other?

10 A It's -- it reflects CAC's agreement
11 that they will vote the bonds, the unsecured notes
12 that they own in favor of the plan that would
13 reflect the settlement.

14 Q And do you know approximately how many
15 of these bonds CAC owns?

16 A I believe it's around 270 million.

17 Q And what's the approximate percentage
18 of the class that CAC owns?

19 A I want to say it's about half.

20 Q And do you have an understanding as to
21 why that agreement for CAC to vote about half of
22 the bonds in that class was part of the settlement
23 that Mr. Danner's counsel negotiated with the
24 debtors and others?

25 A Yeah, so that the bonds voting in favor

1 would carry the class in light of the fact that
2 CAC is the most significant holder.

3 Q And to the extent the bonds carry the
4 class with CAC's support, what are the additional
5 recoveries that are made available to all of the
6 noteholders in that class?

7 A Recoveries would go up to roughly 52
8 cents from 46 cents under the current plan.

9 Q We need to keep the volume up.

10 THE COURT: Please.

11 BY MR. ZEIGER:

12 Q Slow down and keep the volume up.

13 A Yeah.

14 Q Can you pull that any closer to you?

15 A Sure.

16 Q Okay. Let's go back and ask that
17 again. To the extent that the class carries based
18 on CAC's support, what additional consideration,
19 if any, would Mr. Danner -- would the class that
20 Mr. Danner purports to represent receive?

21 A It would be approximately an additional
22 six points to 52 cents on the dollar, 46 under the
23 current plan.

24 Q And under the Danner settlement, if --
25 even with that support from CAC voting all of its

1 bonds, if that's not enough to carry the class,
2 what additional consideration, if any, does Mr.
3 Danner's class receive under the RSA?

4 A It would be approximately eight points
5 of additional recovery.

6 Q Eight points of additional recovery?

7 A Correct.

8 MR. ZEIGER: Your Honor, I was going to
9 go back to PX-1 unless you had additional
10 questions on --

11 THE COURT: No. No --

12 MR. ZEIGER: -- PX-7 --

13 THE COURT: -- I don't.

14 MR. ZEIGER: -- for Mr. Hayes. Okay.

15 THE COURT: Please proceed.

16 MR. ZEIGER: Very well.

17 BY MR. ZEIGER:

18 Q If you could go back to Plaintiff's
19 Demonstrative Exhibit No. 1, Mr. Hayes. We've got
20 the estimated midpoint recovery under the RSA
21 there for Mr. Danner of up to 52 percent. Do you
22 see that?

23 A Yes.

24 Q And how does that relate to the numbers
25 that you just testified about?

1 A It's the same numbers that I just
2 testified to. Recoveries would be up to 52 cents
3 on the dollar for that class.

4 Q And that recovery assumes that the CAC
5 bonds that vote to now support the plan are
6 sufficient with the other noteholders to carry the
7 class?

8 A Correct.

9 Q The amount of claims supporting the
10 restructuring is very small. Why is it so small?

11 A That's because Mr. Danner owns a very
12 small amount of bonds.

13 Q You've only included Mr. Danner's bonds
14 in that column?

15 A That's correct.

16 Q And then if we look at the increases in
17 recovery since June 15, 2016, explain to the court
18 how you came up with the up to \$16 million.

19 A That's the additional recoveries as a
20 result of recoveries going from 46 cents to 52
21 cents.

22 Q 46 cents under the current proposed
23 plan?

24 A Correct.

25 Q And as a result of the RSA, they're now

1 up to 52 cents?

2 A Correct.

3 Q All right. The next line refers to the
4 second lien notes. Do you see that?

5 A Yes.

6 Q And when did the debtors reach an RSA
7 with certain second lien noteholders?

8 A On July 31st.

9 Q If you could turn in your binder, sir,
10 to Plaintiff's Exhibit 6. Let me know when you're
11 there.

12 A Got it.

13 Q What is Plaintiff's Exhibit 6?

14 A This is the second lien notes RSA.

15 Q And what role, if any, did you have in
16 negotiating the second lien notes RSA?

17 A I participated in negotiations along
18 with another -- a bunch of other professionals and
19 principals.

20 Q And is Plaintiff's Exhibit 6 a true and
21 accurate copy of the second lien RSA?

22 A Yes, it appears to be.

23 MR. ZEIGER: Your Honor, the debtors
24 move Plaintiff's Exhibit 6 into evidence.

25 THE COURT: Any objection?

1 MR. BENNETT: No objection.

2 THE COURT: Plaintiff's 6 is admitted.

3 MR. ZEIGER: Thank you, Your Honor.

4 BY MR. ZEIGER:

5 Q Mr. Hayes, what total percentage of the
6 second lien noteholders have signed the second
7 lien RSA?

8 A Approximately 27 percent.

9 Q And are there additional noteholders
10 who support the second lien RSA but haven't, in
11 fact, signed it?

12 A Yes. There's approximately another 10
13 percent which represents parties who have signed
14 other RSAs who also hold second lien notes.

15 Q And can you explain to the court why,
16 if you've signed another RSA, that would indicate
17 support for the second lien RSA.

18 A Those parties who have signed other
19 RSAs are generally supportive of the plan. This
20 would increase recoveries under the plan with
21 contributions from CEC, potentially others. And
22 for that reason, we expect that they would support
23 the second lien RSA.

24 THE COURT: Well, wait a minute. I
25 mean, wouldn't it be possible to own a first lien

1 note and be only too happy with how that
2 investment is treated and think -- and still feel
3 that your second lien note that you had in drawer,
4 was not being treated adequately?

5 I mean, you're making an assumption,
6 aren't you?

7 THE WITNESS: I think it's possible,
8 though, based on all of the negotiations that I've
9 had in the case, very unlikely.

10 THE COURT: But this is an assumption
11 that you're making, that if you're happy with the
12 treatment of one tier that you happen to hold,
13 then you're going to be happy with another.

14 THE WITNESS: Yes and no. There are --
15 there are obligations under the first lien RSAs
16 and other RSAs for the parties to support the
17 plan. And I believe that the language has
18 something to the effect of so long as the
19 modifications to the plan, to the extent there are
20 any, are not materially adverse to the parties.

21 THE COURT: Wouldn't that bind those
22 parties only in their capacity as holders of
23 particular notes?

24 THE WITNESS: I believe that there are
25 broader obligations that support the plan.

1 THE COURT: Go ahead, Mr. Zeiger.

2 MR. ZEIGER: Thank you, Your Honor.

3 BY MR. ZEIGER:

4 Q So if you add together the signatories
5 as well as those who are supporting the plan
6 through other RSAs, what's the total percentage of
7 second lien notes that support the economic deal
8 set forth in the second lien RSA?

9 A Approximately 37 percent.

10 Q Now, under the second lien RSA, what is
11 the approximate baseline recovery for second lien
12 noteholders?

13 A Approximately 55 cents on the dollar.

14 Q Let's break that down to its component
15 parts. To achieve the 55-cent recovery, what do
16 you need to do?

17 A There needs to be additional
18 contribution under the plan, and that would be
19 approximately 900,950 million.

20 Q Let's focus for a moment on the
21 recoveries themselves.

22 Is there a baseline component to the
23 recovery and then additional fees?

24 A Yes, there's --

25 Q Could you explain to the court how that

1 structure works.

2 A Sure. There's a 46-cent baseline
3 recovery, which matches up to the other unsecured
4 creditors in the case. Then there's an additional
5 four-point fee upon achieving a majority of the
6 notes in support of the RSA.

7 And there's another five-point fee to
8 the extent that the current plan is confirmed as
9 amended to reflect this RSA, and also in the event
10 that there's complete consensus.

11 Q Now, how do those recoveries, the
12 baseline recovery of 46 cents and the enhanced
13 recovery of 55 cents on the dollar, compare to the
14 recoveries available under the debtors' current
15 plan?

16 A 46 cents is essentially 7 cents higher,
17 and 55 is 16 cents higher.

18 Q Now, which second lien noteholders can
19 obtain that 55-cent recovery under the second lien
20 RSA?

21 A Any second lien noteholder who signs
22 the RSA.

23 Q And is there any limitation on who can
24 sign the second lien RSA, from the debtors'
25 perspective?

1 A No.

2 Q Now, if we go back to your PDX-1,
3 there's an estimated midpoint recovery under the
4 RSA of up to 3 -- \$3 billion, 55 percent. Do you
5 see that?

6 A Yes.

7 Q And what does that reflect?

8 A That reflects 55 cents on the total
9 claim of 5.5 billion as of the petition date.

10 Q And then if you go over to the next
11 column, the amount of second claim -- the amount
12 of second lien claims currently supporting the
13 restructuring is just over \$2 billion, right?

14 A Correct.

15 Q And what does that reflect?

16 A That reflects the signatories to the
17 second lien RSA.

18 Q And if you move then to the next
19 column, there is an increase in recovery since
20 June 15, 2016, right?

21 A Correct.

22 Q And what is that amount?

23 A It's \$887 million of additional
24 recoveries to the class, available to the class,
25 which is about a 41 percent recovery.

1 Q A 41 percent recovery or increase in
2 recovery?

3 A A 41 percent increase in recovery.
4 Sorry.

5 Q And that's been achieved since June 15,
6 2016?

7 A Correct.

8 Q And just to close out the chart, what's
9 the total class claim for the second lien
10 noteholders?

11 A \$5.5 billion.

12 Q And now is the second lien RSA
13 effective at this point?

14 A It is not.

15 Q Okay. What needs to occur before the
16 second lien RSA becomes effective?

17 A A majority of the second lien notes
18 need to sign on to the second lien RSA.

19 Q And is there anything else that needs
20 to occur before the second lien RSA becomes
21 effective?

22 A No.

23 Q All right. Are you familiar, sir, with
24 the second lien cooperation agreement?

25 A I am.

1 Q And what is the second lien cooperation
2 agreement?

3 A It's an agreement between the 2L
4 committee and certain other second lien
5 noteholders to both not sign the second lien RSA
6 and also vote against the debtors' current plan.

7 Q And to the best of your knowledge,
8 what's the approximate amount of second lien
9 holders who have signed on to that second lien
10 cooperation agreement?

11 A The mid-50 percent range.

12 Q So what impact, if any, does the second
13 lien cooperation agreement have on the ability of
14 the second lien RSA to go effective?

15 A It makes it impossible.

16 Q Is the second lien RSA currently
17 funded?

18 A It is not.

19 Q And what steps, if any, are the debtors
20 taking to fund those additional recoveries?

21 A We are working with CEC, the sponsors,
22 and potentially certain insurance companies to
23 fully fund the plan.

24 Q And given that the second lien RSA is
25 not effective and not funded, do you believe it's

1 still progress?

2 A I do.

3 Q Why?

4 A Because I believe, number one, the
5 recoveries are substantially higher than they were
6 two months ago.

7 Number two, I do believe that it will
8 be fully funded, both from CEC and certain other
9 parties.

10 THE COURT: Which other parties?

11 THE WITNESS: I think ultimately the
12 sponsors and also potentially insurance companies
13 that provide D&O insurance to certain CEC officers
14 and directors.

15 THE COURT: Go ahead, Mr. Zeiger.

16 MR. ZEIGER: Thank you, Your Honor.

17 BY MR. ZEIGER:

18 Q To the extent you know, Mr. Hayes, are
19 all of those parties currently participating in
20 the mediation?

21 A Yes.

22 Q All right. If we go back to
23 Plaintiff's Demonstrative Exhibit 1, the last row
24 -- the next-to-the-last row refers to CEC, CAC.
25 Do you see that?

1 A Yes, I do.

2 Q And what progress, if any, have the
3 debtors made with CEC and CAC since the June 15th
4 injunction?

5 A We have effective RSAs.

6 Q With both CEC and CAC?

7 A Yes, we do.

8 Q And was that true at the time of the
9 last injunction hearing?

10 A No, it was not.

11 Q If you turn, sir, in your binder to
12 PX-2 -- and let me know when you're there.

13 A Got it.

14 Q What is PX-2?

15 A PX-2 is the RSA with CEC.

16 Q And what role, if any, did you have in
17 negotiating that RSA?

18 A I, along with other professionals and
19 principals, helped negotiate this RSA.

20 Q And is Plaintiff's Exhibit 2 a true and
21 accurate copy of the CEC RSA?

22 A Yes, it appears to be.

23 MR. ZEIGER: Your Honor, the debtors
24 move Plaintiff's Exhibit 2 into evidence.

25 THE COURT: Any objection?

1 MR. BENNETT: No objection.

2 THE COURT: Plaintiff's 2 is admitted.

3 MR. ZEIGER: Thank you, Your Honor.

4 BY MR. ZEIGER:

5 Q Sir, if you turn in your binder to the
6 next document, Plaintiff's Exhibit 3. Let me know
7 when you're there.

8 A Got it.

9 Q What is Plaintiff's Exhibit 3?

10 A This is the CAC RSA.

11 Q And what role, if any, did you have in
12 negotiating the CAC RSA?

13 A I, along with other professionals and
14 principals, helped negotiate the CAC RSA.

15 Q And is Plaintiff's Exhibit 3 a true and
16 accurate copy of that RSA, to the best of your
17 knowledge?

18 A Yes.

19 MR. ZEIGER: Your Honor, the debtors
20 move Plaintiff's Exhibit 3 into evidence.

21 THE COURT: Any objection?

22 MR. BENNETT: No objection.

23 THE COURT: Plaintiff's 3 is admitted.

24 MR. ZEIGER: Thank you, Your Honor.

25 BY MR. ZEIGER:

1 Q Mr. Hayes, why is it important from the
2 debtors' perspective to have RSAs with CEC and
3 CAC?

4 A Because it evidences their support for
5 our plan, it evidences their support to merge, to
6 create new CEC and make all the contributions that
7 are necessary to confirm the plan.

8 Q And since June 15th, what progress, if
9 any, has been made with respect to the merger of
10 CEC and CAC?

11 A There's now an executed merger
12 agreement.

13 Q And do you recall approximately when
14 that was achieved?

15 A I believe it was mid-July.

16 Q Why is the merger of CEC and CAC
17 important?

18 A Because it creates new CEC. Without
19 that creation, we would not be able to get all the
20 contributions that are required under the plan.
21 CEC by itself would not be able to make all the
22 contributions.

23 Q Without the merger of CAC and CEC,
24 could the debtors fund the plan?

25 A No.

1 Q All right. Now, the last row on
2 Plaintiff's Demonstrative Exhibit 1 refers to
3 total. Do you see that?

4 A Yes.

5 Q Okay. Assuming all of the second lien
6 noteholders sign on to the second lien RSA and it
7 becomes effective, what is the total approximate
8 recovery for creditors based on the debtors'
9 current plan?

10 A 17.2 billion.

11 Q And how does that amount of 17.2
12 billion compare to the total claims as of the
13 petition date that the creditors have against the
14 debtors' estates?

15 A The total amount of claims in the last
16 column, and that's 18.5 billion. A very high
17 percentage.

18 Q And I can't do the same math we did
19 with Your Honor earlier, but do you have -- do you
20 have an approximate --

21 MR. ZEIGER: Mr. Hayes was a math
22 major, if I recall correctly, so we'll put him on
23 the spot.

24 BY MR. ZEIGER:

25 Q Do you recall approximately how much --

1 what percentage of the total claim amount is being
2 recovered under the debtors' plan?

3 A It's roughly 92 percent.

4 Q Now, based on the current plan and the
5 RSAs in effect, how much of the debtors' \$18
6 billion capital structure supports the debtors'
7 restructuring?

8 A 13.7 billion.

9 Q And do you see that in the -- that's
10 the sum total of the amount of claims supporting
11 the restructuring?

12 A Correct.

13 Q And assuming all second lien notes sign
14 on to the RSA, the second lien RSA, and it becomes
15 effective, how much have recoveries increased
16 since this court entered the injunction on June
17 15th?

18 A Almost a billion dollars.

19 THE COURT: What would be the increase
20 if the second lien RSA did not become effective?

21 THE WITNESS: It would be approximately
22 \$75 million.

23 BY MR. ZEIGER:

24 Q Now, even if the second lien RSA
25 doesn't become effective, do you believe the fact

1 that that 55 cent offer is out there represents
2 progress?

3 A I do.

4 Q Why?

5 A I believe that it gets us very close to
6 an agreed deal with the 2L committee. I believe
7 that we're a few points apart based on my
8 participation in the negotiations.

9 THE COURT: What makes you think so? I
10 mean, here we are.

11 (Laughter.)

12 THE COURT: And if we were close, we
13 wouldn't be here. You would all be in some room
14 talking, and I would be back in the back working
15 on something else.

16 So why do you think so?

17 THE WITNESS: For one, in terms of the
18 amount of the delta between the debtors, CEC, and
19 the 2L committee, that amount is very low. I
20 measured it in a few points of recovery.

21 Number two, this is a very big and
22 complicated case, as you know, and it takes time
23 to work through. So even if we were to lock
24 ourselves in a room, which we have done for many
25 days over the course of the summer with the

1 parties, it takes time to work through key issues.

2 There's one issue in particular that's
3 occurred over the summer, which is a positive
4 development in the case. That's the sale of the
5 -- most of the assets of Caesars Interactive.
6 It's approximately 3-plus-billion dollars of -- of
7 net proceeds to CGP, which is one of the CAC and
8 CEC subsidiaries.

9 That will -- that's helpful from a
10 valuation standpoint. We're essentially agreed
11 from a valuation standpoint with the 2L committee
12 as well as with CEC. And our expectation is, with
13 the proceeds coming in from CIE, that will allow
14 us to make significant additional progress.

15 But it's a major change to what new CEC
16 will look like post-effective date. And because
17 of that major change, it will take -- it has taken
18 and will continue to take time to work through the
19 modifications to the plan.

20 THE COURT: That wasn't what Mr.
21 Seligman told me in court.

22 But in any event -- so if you are
23 suggesting that something is close, then
24 presumably you have a number that you know would
25 satisfy the second lien noteholders who are

1 currently not signatories to the RSA.

2 THE WITNESS: I do.

3 THE COURT: Go ahead, Mr. Zeiger.

4 MR. ZEIGER: It makes it all very
5 tricky, Your Honor, in litigating the ongoing
6 mediation at this moment.

7 THE COURT: Oh, I don't know. They
8 have a demand, and the question is whether you're
9 going to meet it or whether something else will
10 happen. But, in any event, that's not today's
11 issue.

12 MR. ZEIGER: Very well, Your Honor.

13 BY MR. ZEIGER:

14 Q Okay. Mr. Hayes, we just walked
15 through Plaintiff's Demonstrative Exhibit 1, and I
16 want to follow up through kind of the course of
17 the remaining exam on some of the issues the court
18 just asked you about and you raised in your
19 answer.

20 But just to stay -- I just want to
21 close out this chart quickly.

22 What creditor groups -- let me start
23 that again.

24 We just worked through the chart
25 showing all the creditor groups that support the

1 plan, right?

2 A Yes.

3 Q And what creditor groups are the
4 debtors still negotiating with to try to reach
5 full consensus and add them to the next version of
6 PDX-1?

7 A The first lien notes, though I
8 indicated we're very close to agreement with the
9 first lien notes. We're essentially agreed on all
10 the economic provisions and the RSA with the first
11 lien notes.

12 The next would be the second lien
13 noteholder committee and those with whom they've
14 signed a cooperation agreement. And, lastly,
15 certain unsecured noteholders who have not signed
16 on to the Danner RSA.

17 Q And to follow up on a point you made to
18 the court, how has the CIE sale or the sale of the
19 significant assets of CIE impacted your
20 negotiations with the first lien noteholders?

21 A It has complicated them because it
22 changes, as I said, the constitution of new CEC.

23 Our valuation of new CEC that's in the
24 current disclosure statement is approximately a \$6
25 billion equity value, \$7 billion if you include

1 the convertible notes on an as-converted basis.
2 So \$6 billion.

3 And the value -- and that value of CIE
4 from the sale is approximately \$3 billion. So
5 essentially half of the equity value of new CEC
6 upon the sale of the CIE assets will be sold, and
7 those proceeds will be used in a manner to be
8 determined. It's currently being negotiated
9 between the parties, including the first lien
10 notes.

11 Q Just to put a fine point on it, the
12 current plan was assuming that new CEC would
13 include about \$6 billion worth of assets; is that
14 right?

15 A Correct.

16 Q And --

17 A Equity value.

18 Q Equity value.

19 A Yes.

20 Q And assuming the sale of the social,
21 mobile gaming business of CIE goes forward, how
22 much of that original 6 billion would be sold?

23 A Approximately half.

24 Q And that's what, in part, raises the
25 issues that you were talking about, some of these

1 challenges with the first lien noteholders?

2 A Correct. The first lien noteholders,
3 because they will own PropCo, are the
4 beneficiaries of a guaranty from new CEC. So the
5 use of proceeds from the CIE sale is a key focus
6 of theirs to ensure that new CEC has the right
7 credit profile.

8 Q And if you can break that down a little
9 bit and explain to the court what the relationship
10 is between the guaranty that we heard so much
11 about when Mr. Millstein was here in June, and
12 then the sale of CIE, what's the relationship
13 between the two of those?

14 A Well, put simply, if new CEC took \$6
15 billion of equity value, sold 3 billion and
16 distributed it to creditors, shareholders, et
17 cetera, most likely the creditors given this case,
18 then the equity value in new CEC would be
19 approximately half of what was originally
20 expected, which would reduce the credit quality of
21 new CEC and reduce the value of the guaranty.

22 It's that reason -- for that reason
23 that the first lien noteholders want to make sure
24 that the use of those CIE proceeds are acceptable
25 to them.

1 Q And what are some of those uses that
2 are being discussed for those proceeds?

3 A Potential uses related to this plan,
4 funding payments under this plan, reductions in
5 debt at CEC's subsidiaries, including CEOC OpCo on
6 the effective date, as well as certain payments to
7 creditors that would otherwise -- creditors of
8 CEOC that would otherwise receive shares in new
9 CEC.

10 Q So assuming the CIE sale goes forward,
11 some creditors who previously would have received
12 things like securities or debt may be receiving
13 cash?

14 A Correct.

15 Q And how has that been received by the
16 creditor?

17 A It's been received very well, and it
18 has helped us bridge the gap on valuation.

19 Q And you've mentioned that a couple
20 times. Let's just hit it now.

21 When we were last here before the judge
22 in June, there was discussion with Mr. Millstein
23 and Mr. Hilty as to the value of new CEC. Were
24 you here for that discussion?

25 A I was.

1 Q And do you recall approximately what
2 the gap was between the second lien noteholders
3 committee's view and the debtors' view of
4 valuation?

5 A It was between 500 and a billion
6 dollars of differential.

7 Q And what is that differential today?

8 A I believe it's zero.

9 Q And why have we been able to close that
10 gap on valuation issues with the second lien
11 committee and the debtors' view?

12 A It's principally the CIE transaction as
13 well as the strong performance of the debtors.

14 Q And can you explain to the court how
15 the CIE transaction impacted the parties'
16 valuations.

17 A It impacted our valuation in that our
18 valuation specifically is the assets of CIE was
19 approximately \$300 million lower than our
20 expectation of the net proceeds from the sale.

21 So our valuation, all else being equal,
22 would have gone up by 300 million. And, again, I
23 believe the 2L committee, though I'm not doing
24 their valuation, my understanding is that it's
25 gone up significantly as a result of the CIE

1 transaction.

2 Q So we have a market indicator of what a
3 portion of the assets are worth that was higher --
4 slightly higher than what your view was and higher
5 than what the noteholder committee's view was?

6 A Correct.

7 Q Okay. So let's move on from the
8 negotiations with the first lien notes and turn to
9 the noteholder committee, the official committee
10 representing the second lien notes. Okay?

11 Do you know whether the defendants
12 here, WSFS and BOKF, are on the noteholder
13 committee?

14 A Yes, they are.

15 Q And in general, what is the current
16 status of negotiations with the noteholder
17 committee?

18 A We continue to mediate. I have
19 discussions almost daily with various parties in
20 the 2L group, including professionals.

21 Q Since the June 15th injunction order
22 was entered, how many in-person mediation sessions
23 have there been between the debtors and the
24 noteholder committee, among other parties?

25 A I believe around five.

1 Q And how many of those sessions have you
2 attended on behalf of the debtors?

3 A I believe all of them.

4 Q And what other parties have
5 participated in those mediation sessions with
6 respect to the noteholder committee mediation?

7 A With respect to the noteholder
8 committee mediation, at some sessions, Judge
9 Farnan, the mediator, has requested principals at
10 those sessions. The principals have participated
11 both from the 2L committee, certain members of
12 CEC, as well as professionals representing all the
13 parties.

14 Q Has anyone from Apollo participated in
15 those mediation sessions?

16 A Yes.

17 Q Who?

18 A Marc Rowan, David Sambur, and I believe
19 Alex Van Hoek.

20 Q And can you briefly remind the court
21 who those three individuals are.

22 A Those three individuals are principals
23 of Apollo. Marc Rowan and David Sambur are on the
24 board of CEC.

25 Q And who is Mr. Van Hoek?

1 A Mr. Van Hoek works at Apollo with and
2 for David Sambur and Marc Rowan.

3 Q Is Mr. Rowan one of the co-founders of
4 Apollo?

5 A He is.

6 Q Now, has anyone from the TPG, the other
7 sponsor, attended these mediation sessions?

8 A Yes.

9 Q Who is that?

10 A Rick Schifter.

11 Q And what is Mr. Schifter's role at TPG?

12 A I believe he is a senior partner at
13 TPG.

14 Q If you can keep your voice up --

15 A Sure.

16 Q -- a little more, it would be helpful.
17 And can you explain to the court the extent to
18 which the individuals from Apollo and TPG have
19 participated in the mediation sessions that you've
20 attended?

21 A They've participated actively when the
22 principals have been requested to be in attendance
23 by the mediator.

24 Q And can you give the court some
25 examples of the extent of their participation.

1 A They've participated directly with the
2 principals of the 2L committee, presented
3 proposals, you know, received feedback, et cetera.

4 Q In your view, have they been active in
5 the mediation?

6 A Yes, they have.

7 Q What's your view, Mr. Hayes, if any, as
8 to whether the parties that are participating in
9 this mediation have been participating in good
10 faith?

11 A I believe all parties have been
12 participating in good faith.

13 Q And that would include the second lien
14 noteholders?

15 A Yes.

16 Q And CEC?

17 A Yes.

18 Q And the sponsors?

19 A Correct.

20 Q And hopefully the debtors, too?

21 A Yes, we have.

22 Q I think you mentioned this earlier, but
23 in addition to these formal mediation sessions,
24 have the debtors' principals or advisors also had
25 discussions with the noteholder committee

1 principals or advisors?

2 A Yes, the debtors' principals have been
3 in attendance, not in all sessions; but when they
4 have been requested, they have been in attendance.

5 Q And that's at the mediation?

6 A Correct.

7 Q Okay. And who are the debtors'
8 principals, just to close that out?

9 A Mr. Stauber, Mr. Winograd.

10 Q And they are the two independent
11 directors on the governance committee of the CEOC
12 board?

13 A Correct.

14 Q And you've mentioned they've attended
15 when their presence has been requested. Who is
16 makings those requests?

17 A Judge Farnan, the mediator.

18 Q And in some mediation sessions, he's
19 asked that only advisors be there, and some he's
20 asked principals to attend.

21 A That's correct.

22 Q Now, if we set aside the formal
23 mediation process that's ongoing, have you also
24 had conversations with either principals or
25 advisors on the noteholder committee?

1 A Yes, I have.

2 Q And how often, approximately, do those
3 occur?

4 A I would say almost on a daily basis.

5 Q And, now, the other group that you
6 mentioned that's participating in the mediation is
7 the ad hoc group of unsecured notes, right?

8 A Yes.

9 Q And do you know whether defendants in
10 this action, Trilogy and Relative Value, are on
11 the ad hoc group of unsecured notes that's
12 participating in the mediation?

13 A Yes, they are.

14 Q And what is the approximate amount of
15 the unsecured notes that are represented by that
16 group?

17 A I believe we're around 20 million.

18 Q And what is the current status of
19 negotiations with respect to the ad hoc group and
20 their \$20 million worth of holdings?

21 A We're currently in mediation.

22 Q Now, since June 15th, approximately how
23 many mediation sessions have you attended with the
24 ad hoc group of unsecured noteholders?

25 A Two.

1 Q And are the debtors, at least in their
2 view, still mediating with the ad hoc group?

3 A Yes.

4 Q Now, we've talked already about the
5 other big factor in the mediation, which is the
6 sale of CIE, right?

7 A Yes.

8 Q And just to make sure that we're all on
9 the same page, can you describe to the court what
10 the asset is that's being sold from CEC?

11 A Sure. It's the social and mobile
12 gaming business of CIE, which is almost all of the
13 CIE business. It excludes real money gaming. And
14 it's being sold in a \$4.4 billion gross dollar
15 value transaction.

16 Q And what generally is social, mobile
17 gaming?

18 A It's online gaming where people go on
19 to sites or apps on their phone and game, but not
20 using real money.

21 Q And when was the sale of the social,
22 mobile gaming business of CIE announced?

23 A I believe it was late July.

24 Q And that was after the last injunction
25 was entered?

1 A Yes, it was.

2 Q And you mentioned earlier there are a
3 number of positive impacts related to issues, such
4 as the currency available for recoveries and
5 valuation issues as a result of this sale, right?

6 A Yes. That's right.

7 Q What impact, if any, is the sale having
8 on the timing of the mediation and negotiation
9 that's currently ongoing with creditors?

10 A Although it's a positive impact, it
11 does raise another change to the plan that, as I
12 mentioned, is a material change relative to the
13 constitution of new CEC, which really requires --
14 will require and has required negotiations with
15 all the creditor constituencies.

16 Q Now, earlier we looked at the list of
17 supporting parties on Plaintiff's Demonstrative
18 Exhibit 1. Do you recall that?

19 A Yes.

20 Q And which of those entities will you
21 need to go back and renegotiate with if the sale
22 goes forward?

23 A Likely all of them. I believe that we
24 will be able to -- because this is a positive
25 change to new CEC, the valuations and currency,

1 that we will be able to do so.

2 Q Now, does that mean you're starting
3 from scratch with all of them?

4 A No, it does not.

5 Q So what are some of the types of issues
6 that you'll need to address with each one?

7 A Just going down the list, the first
8 lien banks, they will be focused on the amount of
9 cash used to reduce the debt at CEOC OpCo because
10 they are the beneficiaries of the syndication of
11 that debt on the effective date.

12 Q And what impact does the CIE sale have
13 on that syndication?

14 A It should improve the ability to
15 syndicate that debt because it will reduce the
16 leverage at CEOC OpCo.

17 Q And, in general, what is syndication of
18 debt and how does it tie into the plan?

19 A The plan requires that approximately
20 \$1.6 billion of debt at CEOC OpCo be raised in the
21 market with the proceeds going to the first lien
22 banks and first lien notes.

23 Q And what impact would the sale of CIE
24 have on that process?

25 A It would reduce the amount that needs

1 to be raised in the market, reduce the leverage,
2 and reduce the risk associated with getting that
3 done.

4 Q What are some of the other types of
5 issues you'll need to revisit with at least some
6 of the parties supporting the restructuring?

7 A The first lien notes, as I mentioned,
8 the use of cash to repay debt versus to provide
9 cash to creditors that would otherwise receive new
10 CEC equity is a key issue as it relates to their
11 guaranty through OpCo.

12 With respect to the other unsecured
13 creditors as well as the 2L notes, the amount of
14 cash that's being used to reduce the amount of new
15 CEC equity being provided to the creditors is the
16 principal concern.

17 Q And have the --

18 MR. ZEIGER: Go ahead, Your Honor.

19 THE COURT: No.

20 BY MR. ZEIGER:

21 Q And have those discussions, in fact,
22 started?

23 A They have.

24 THE COURT: So, in other words, because
25 of the sale of CIE, you are going to have to

1 renegotiate every restructuring support agreement
2 you currently have, that's what you're saying, all
3 those agreements are going to be up in the air?

4 THE WITNESS: I would say that I view
5 these as modifications that will -- that everyone
6 will be supportive of. The reason for that, for
7 example, is the first lien banks, this improves
8 the likelihood of them getting all the cash that
9 they hoped they would get under the plan. It
10 otherwise is essentially the same agreement with
11 them.

12 BY MR. ZEIGER:

13 Q Are there any creditors, to your
14 knowledge, who are disappointed by this sale of
15 CIE?

16 A No.

17 Q It's just a matter of how you implement
18 the windfall being created?

19 A Correct.

20 Q Okay. Now, when was the last formal
21 mediation session?

22 A I believe it was last week.

23 Q And following that mediation session,
24 are you aware that Judge Farnan provided a
25 mediator statement to the court?

1 **A I am.**

2 **Q If you turn, sir, in your binder to**
3 **PX-16.**

4 MR. BENNETT: Well, before we publish
5 the document, we have a little work to do.

6 MR. ZEIGER: I was just going to have
7 him identify it, and then we can talk about our
8 agreement --

9 MR. BENNETT: Okay.

10 MR. ZEIGER: -- as set forth.

11 MR. BENNETT: Thank you.

12 MR. ZEIGER: Your Honor, we're going to
13 try to short-circuit some of the arguments that
14 were made last time. And we've tried to implement
15 the court's ruling on the last mediator statement
16 by agreement to avoid further argument and delay
17 in this proceeding, which is, I think, what Mr.
18 Bennett was referring to.

19 THE COURT: It sounded like it. Go
20 ahead.

21 MR. ZEIGER: Okay.

22 BY MR. ZEIGER:

23 **Q Mr. Hayes, can -- what is PX-16?**

24 **A It's the mediator's statement.**

25 **Q And is it a true and accurate copy of**

1 **the mediator's statement, to the best of your**
2 **knowledge?**

3 **A Yes.**

4 MR. ZEIGER: Your Honor, as I previewed
5 a moment ago, we've been in discussions with Mr.
6 Bennett and his colleagues regarding the
7 admissibility of the mediator statement.

8 As Your Honor may recall, the majority,
9 but not all of the last mediator's statement was
10 admitted under the residual exception under
11 Federal Rule of Evidence 807. And so we started
12 that dialogue and have reached an agreement as to
13 the portion that should come into evidence based
14 on the court's prior ruling.

15 So hopefully we've made a little
16 progress in addition to the financial folks.

17 THE COURT: So you have an agreement
18 that some of Exhibit 16 is admissible -- or will
19 be admitted --

20 MR. ZEIGER: Will be admitted.

21 THE COURT: -- whether it's admissible
22 is another matter.

23 MR. ZEIGER: They will object to
24 certain portions of it, and we've agreed, based on
25 the court's prior ruling, that certain portions of

1 it should not be admitted, much like the court did
2 before.

3 THE COURT: Okay. And how will I find
4 out what I can look at?

5 MR. ZEIGER: I'm proposed -- I would
6 propose to tell you.

7 Mr. Bennett can tell you, too, if
8 you're tired of hearing from me, Your Honor,
9 but --

10 THE COURT: No.

11 MR. ZEIGER: -- I'm happy to walk you
12 through it.

13 THE COURT: I'm never tired of hearing
14 from you.

15 MR. VELOCCI: Your Honor, if I may, we
16 haven't been privileged to these discussions about
17 what was objected to and what will be agreed to.

18 THE COURT: You'd better identify
19 yourself for the record.

20 MR. VELOCCI: I'm sorry. I apologize.
21 It's Frank Velocci, Drinker, Biddle & Reath, on
22 behalf of Trilogy. So this is the first time
23 we're hearing it. We plan to object to the entire
24 document; but understanding what was ruled on
25 before, we're more than happy to review what's

1 been discussed and perhaps even agree to it. We
2 just haven't been parties to the discussion.

3 THE COURT: Do you want to take a break
4 and have a little chat?

5 MR. VELOCCI: I think that's
6 appropriate.

7 MR. BENNETT: Right. I think it's a
8 good idea. It's probably about the right time
9 anyway. And I think --

10 THE COURT: Okay.

11 MR. BENNETT: -- what we should do is
12 prepare a version that's got blacked out the parts
13 that aren't accepted.

14 THE COURT: All right. So what do you
15 think, 15 minutes?

16 MR. BENNETT: That should be fine.

17 THE CLERK: All rise. Court is on a
18 15-minute recess.

19 (Brief recess.)

20 THE CLERK: Court is reconvened.
21 Please be seated and come to order.

22 MR. ZEIGER: Good morning, Your Honor.
23 Jeffery Zeiger again, Kirkland & Ellis, on behalf
24 of the debtors. Your Honor, we have an agreement
25 and a black-line copy for Your Honor --

1 THE COURT: Okay.

2 MR. ZEIGER: -- thanks to Nancy
3 Sharkey. If I may approach.

4 THE COURT: Sure.

5 MR. ZEIGER: With respect to WSFS, we
6 have an objection with respect -- still with
7 respect to Trilogy.

8 MR. VELOCCI: Your Honor, Frank
9 Velocci, Drinker, Biddle & Reath.

10 Your Honor, we did take time to try and
11 look at the proposed redactions and then perhaps
12 try and parse out additional language that would
13 make us comfortable with the document.

14 Unfortunately, we just -- we couldn't get there.
15 Obviously, our primary objection, Your Honor, is
16 that this is hearsay; but, more importantly, we
17 just simply can't, within the context of this
18 document, you know, agree to withdraw our
19 objection because we believe that Judge Farnan
20 doesn't -- doesn't accurately reflect certain of
21 the conversations that we've had with him.

22 I believe that some of his statements,
23 while probably directed primarily at the 2L
24 committee mediation sessions, doesn't specifically
25 state that. I can give you a for instance. The

1 last sentence of paragraph 1, Judge Farnan talks
2 about having numerous other in-person and
3 telephonic discussions with the principals and
4 advisors to these parties.

5 I can tell you definitively, and we
6 have a witness here to testify today, that there
7 were no other in-person or telephonic discussions
8 with our ad hoc group of creditors and Judge
9 Farnan.

10 In addition, he talks about material
11 progress, and he just says the mediation without
12 any specific details as to which sessions or which
13 parties. So it's impossible for me to parse out
14 which ones -- and which statements he's referring
15 specifically to the 2L negotiations and
16 specifically with our negotiations. And without
17 him available here for cross-examination, and for
18 us to flush that out, I just think it would be
19 highly prejudicial to allow any portion of it in
20 against our ad hoc committee.

21 MR. ZEIGER: Your Honor, if I may
22 respond.

23 I believe these issues go to the weight
24 of the document. It sounds like they have a
25 witness here who will clarify. My understanding

1 is there's really one sentence at issue. Mr.
2 Hayes also may be able to clarify that last
3 sentence. And the issue here is that Judge Farnan
4 refers to "I have had numerous other in-person and
5 telephonic discussions with principals and
6 advisors for 'these parties.'"

7 And the question is there's a number of
8 parties, you know, set forth above, and it sounds
9 like Mr. Velocci's position is that that's not
10 true with respect to them. Nobody else has that
11 issue with respect to that.

12 THE COURT: These parties would refer
13 back to Caesars insurers or the senior unsecured
14 notes group or both. I don't think the antecedent
15 could go farther back than that, right?

16 I don't know whether he's referring to
17 one or both of those groups.

18 MR. ZEIGER: Your Honor, it sounds like
19 they have a witness who will make their position
20 known on the record.

21 THE COURT: Does that go to weight or
22 does it go to trustworthiness?

23 MR. ZEIGER: Well, Your Honor, the last
24 time Your Honor found that there were
25 circumstantial guarantees of trustworthiness based

1 on who the statement was from, a federal judge for
2 25 years, including four years as the chief judge,
3 and he was appointed as mediator with consent of
4 all parties. He was also more probative on these
5 issues than any other evidence that we could bring
6 in because, among other things, you know, the
7 agreement that we all reached allows Judge Farnan
8 to make these reports to the court without running
9 into issues relating to the mediation privilege.

10 So, you know, last time on that basis
11 Your Honor allowed in the statement for both WSFS
12 and Trilogy, and, you know, all of the defendants.
13 And, therefore, we believe, frankly, that that's a
14 judicial estoppel on behalf of -- you know, that
15 they can't now object to a similar statement
16 coming in, given their prior positions.

17 MR. VELOCCI: A couple of points, Your
18 Honor, on this. I'm not here to debate Judge
19 Farnan's trustworthiness. That's not what we're
20 talking about.

21 We had no opportunity before this
22 statement was filed to review it and comment on
23 it. I believe that there was an agreement in
24 place to provide us with that type of notice, but
25 it was not received. It was just simply filed on

1 the docket, number one.

2 Number two, again, as written, it
3 doesn't -- it doesn't detail which of his
4 statements he attributes to which mediation
5 session. And, you know, we have -- we have had
6 two mediation sessions. At one of those sessions,
7 there was only one -- there was only principals of
8 CEC present, so there were not principals of the
9 debtor, for instance.

10 Our first mediation session, again, we
11 have a witness to testify to this, we met only
12 with Judge Farnan in discussing our claims and not
13 with even professionals of counter-parties to the
14 mediation.

15 So there are many details here that, if
16 they were parsed out and he attributed certain
17 facts to which mediation he was talking about,
18 then perhaps I wouldn't have an issue; but as
19 written, he seems to conflate all of the mediation
20 sessions, and that's just not fair with respect to
21 our group.

22 THE COURT: Well, if you're not taking
23 issue with 807(a)(1) and circumstantial guarantees
24 of trustworthiness and you're just arguing that a
25 portion of the statement is unclear and possibly

1 wrong, then I'm inclined to agree with Mr. Zeiger,
2 that that goes to weight.

3 You also have an advantage, don't you,
4 if you have a witness who is actually going to
5 testify that part of this is wrong. And I assume
6 there would be no objection to that --

7 MR. ZEIGER: There won't be, Your
8 Honor.

9 THE COURT: -- person being called. I
10 have only a dim recollection of how I handled the
11 first statement; but given what it said, I assume
12 that it was offered against the debtors and that,
13 therefore, Mr. Velocci, you and some of your
14 cohorts were arguing that that statement should be
15 admitted under 807, and I must have agreed with
16 you.

17 So I think there actually is something
18 of a judicial estoppel here, but I also think
19 you're not harmed particularly because you have
20 the ability to call your witness.

21 So if that's the only objection, then
22 I'll go ahead and admit -- this is Plaintiff's 16,
23 I believe?

24 MR. ZEIGER: Yes, Your Honor.

25 THE COURT: In its redacted form over

1 objection.

2 MR. VELOCCI: Thank you, Your Honor.

3 MR. ZEIGER: Thank you, Your Honor.

4 THE COURT: As long as we're talking
5 about things, there were a couple of things I
6 should have cleared up right at the beginning
7 before we even began with Mr. Hayes.

8 One is, as we did last time, no one
9 wants to revisit basics like who the debtors are
10 and what the term "disputed transactions" means.
11 And so I'm going to -- whatever the outcome here,
12 I'm going to rely on those kinds of background
13 findings, as I did before.

14 And I also intend to rely on the
15 transcripts from the past year. This is -- I
16 think we're dealing with kind of a continuum, and
17 so I'm treating that as evidence as well.

18 The other thing I wanted to ask,
19 although I think it may not be controversial at
20 all, is this: There were some statements in
21 support of the injunction filed by CEC and a
22 couple of creditor groups. I think the first lien
23 banks and Mr. Danner filed something. And I
24 didn't know what the defendants' position was on
25 those.

1 purely about these statements which are before me
2 and what I should do with them. And the parties,
3 the actual parties to the adversary proceeding
4 have made their arguments and I said I will get to
5 it when I get to it.

6 MR. CROWLEY: Thank you, Your Honor.
7 That's my only question to ask.

8 THE COURT: All right. After that
9 little interlude, Mr. Zeiger, would you like to
10 continue?

11 MR. ZEIGER: I think so, Your Honor.
12 Let me just figure out where we were.

13 THE COURT: We had just admitted into
14 evidence Plaintiff's Exhibit 16.

15 MR. ZEIGER: Yes, sir.

16 THE COURT: You redacted the mediator's
17 statement.

18 MR. ZEIGER: Yes, sir.

19 BY MR. ZEIGER:

20 Q Okay. Mr. Hayes, do you have Exhibit
21 16 in front of you, Plaintiff's Exhibit 16 in
22 front of you?

23 A I do.

24 Q And we've actually worked through most
25 of the same points that Judge Farnan makes in

1 here, so I don't want to belabor it, but if you
2 could turn to the last sentence of paragraph 2,
3 which has not been redacted. Let me know when
4 you're there. It's at the top of page 3.

5 A I've got it.

6 Q That sentence states, "In addition, the
7 debtors, CEC, and the noteholder committee have
8 been engaged in negotiations regarding the
9 nonmonetary terms of a potential restructuring
10 support agreement among the parties."

11 Do you see that?

12 A Yes, I do.

13 Q And can you briefly describe for the
14 court what negotiations have been ongoing
15 regarding the nonmonetary terms of an RSA
16 agreement with the second lien committee.

17 A It's the actual negotiation of the RSA,
18 excluding economic terms. So there's been an RSA
19 draft shared between the parties.

20 Q And that would be, you know, similar to
21 the construct that has been done with the other
22 parties supporting the debtors' restructuring?

23 A Correct.

24 Q And those negotiations are also still
25 ongoing?

1 A Yes, they are.

2 Q Now, when you left that last formal
3 mediation session one week ago today, what was the
4 plan, if any, for additional sessions?

5 A I believe the expectation was to meet
6 sometime this week.

7 Q Now, sir, are you aware that at the
8 omnibus hearing the day after the last formal
9 mediation, the judge suggested we should try to
10 get together between last Wednesday and today?

11 A I am.

12 Q You saw that in the transcript.

13 A I did, yes.

14 Q And did any formal mediation sessions
15 occur during that last week?

16 A No, no formal mediation sessions.

17 Q Why not?

18 A I believe Judge Farnan had some
19 personal matters to attend to, and he believed
20 that it made sense to meet with him in attendance
21 for the next mediation session.

22 THE COURT: So when exactly this week
23 were you anticipating meeting with him?

24 THE WITNESS: After this hearing.

25 THE COURT: Okay. Go ahead, Mr.

1 Zeiger.

2 BY MR. ZEIGER:

3 Q And what, if anything, did Judge Farnan
4 ask you to do to prepare for that next meeting?

5 A He asked us to run some analysis for
6 him because we've -- he does not have his own
7 financial advisor. We've been working with him
8 closely, essentially outlining the terms of a
9 potential proposal that could be shared with the
10 parties.

11 Q A mediator's proposal?

12 A Correct.

13 Q And did you provide that information to
14 Judge Farnan?

15 A We did.

16 Q And when did you provide that
17 information to Judge Farnan?

18 A On Sunday night.

19 THE COURT: What's a mediator's
20 proposal?

21 THE WITNESS: It's an economic proposal
22 around the terms of a settlement between the 2L
23 committee, the debtors, and the CEC parties.

24 THE COURT: Okay. It's not a -- I
25 guess I'm confused about the term, which I have

1 not heard before.

2 You don't mean the mediator's own
3 suggestion of what he believes would be an
4 appropriate settlement?

5 THE WITNESS: I do mean that.

6 THE COURT: You do mean that?

7 THE WITNESS: Yes.

8 THE COURT: Well, you know, there are
9 different kinds of mediation, and some mediators
10 do what's known as facilitative mediation that
11 involves not revealing what the mediator actually
12 thinks the outcome ought to be.

13 And I don't know whether the mediator
14 here is pursuing that model or not, so it's not
15 quite the subject of laughter some people believe.

16 Okay. Thank you.

17 BY MR. ZEIGER:

18 **Q All right. Now, since that August 17th**
19 **omnibus hearing, have there been any discussions**
20 **between the debtors and the second lien noteholder**
21 **advisors outside of mediation?**

22 **A Yes, there have.**

23 **Q And who participated in those**
24 **discussions?**

25 **A I did.**

1 Q And who participated on behalf of the
2 noteholders?

3 A A member of Houlihan Lokey.

4 Q And when was the most recent discussion
5 that you've had with a member of Houlihan Lokey?

6 A This past weekend.

7 Q Mr. Hayes, were you here for Mr.
8 Hilty's testimony last June regarding the
9 importance of deadlines?

10 A Yes, I was.

11 Q And what is your view as to the
12 importance of deadlines?

13 A I think reasonable deadlines help get
14 deals done.

15 Q And what do you mean by "reasonable
16 deadlines"?

17 A I mean reasonable in light of all that
18 needs to be accomplished, the complexity of the
19 circumstances, the number of creditors, the size
20 of the deal, et cetera.

21 Q When does the current injunction
22 expire?

23 A On August 29th.

24 Q And when is the hearing set on motions
25 for summary judgment in the Southern District of

1 New York?

2 A The day after, August 30th.

3 Q Now, how, if at all, have those
4 deadlines affected the negotiations?

5 A It's made it -- as time has progressed,
6 it's made it a little bit more difficult to
7 actually get people together and get a deal done
8 because they've been focused on the deadline as
9 opposed to really negotiating the material terms
10 of the deal.

11 Q And what do you mean by "they've been
12 focused on the deadline"?

13 A One example is preparing for the
14 hearing that we have here today. You know, I
15 think that's been a little bit distracting, and
16 we're all sitting here instead of actually sitting
17 down trying to mediate.

18 Q And what impact, if any, have these
19 deadlines had on the willingness of parties to get
20 to their bottom line?

21 A I think, again, because of the
22 deadline, as we get closer to that deadline,
23 people start focusing on the deadline and not on
24 actually making material progress.

25 Q And why is that?

1 A Essentially the deadline provides, you
2 know, certain parties, in this case, the
3 defendants, potentially more leverage as they
4 approach those dates.

5 Q Now, in your deposition, you testified
6 that you had not noted any difference in the
7 parties' respective negotiation leverage since the
8 court's June 15th order. Do you recall that?

9 A Yes.

10 Q And what were you referring to there?

11 A I was referring to the leverage that
12 the parties have in the case relative to their
13 particular rights and claims.

14 Q And their ultimate overall leverage?

15 A Correct.

16 Q And how is that different from then the
17 timing issue that you just described?

18 A Well, I think leverage changes over
19 time. So as you get closer to that deadline, I
20 think leverage increases for the defendants in
21 this case.

22 Q And because things could change as soon
23 as next week with respect to the strength of their
24 guaranty claims?

25 A Correct.

1 Q Now, the debtors have asked the court
2 to extend the injunction through plan
3 confirmation. Are you aware of that?

4 A I am.

5 Q And do you agree with that request?

6 A I do.

7 Q Why?

8 A Because I think it will take that
9 period of time to actually negotiate a deal and
10 come to full consensus.

11 Q And what impact, if any, would
12 extending the injunction through confirmation have
13 on the timing issue that you've just described?

14 A I think it would really eliminate it
15 and put everyone's leverage essentially on the
16 same timeline in and around confirmation and
17 litigating -- hopefully not litigating, but
18 potentially litigating confirmation issues at
19 confirmation.

20 Q As confirmation approaches for all
21 parties, all parties would feel the pressure to
22 get to a deal?

23 A That's correct.

24 THE COURT: That's just another
25 deadline, isn't it?

1 THE WITNESS: It is.

2 THE COURT: And there will be a hearing
3 associated with that, right?

4 THE WITNESS: Yes.

5 THE COURT: And there will probably be
6 lots of preparation for that hearing, don't you
7 think?

8 THE WITNESS: Yes.

9 THE COURT: Why won't that distract
10 people and prevent people from negotiating?

11 THE WITNESS: I think it will be
12 distracting as you get closer to January. But I
13 think January is a reasonable time period away
14 that will allow us to get to a deal ahead of time.

15 THE COURT: There was a point at which
16 August 29th was a reasonable time period away,
17 right?

18 THE WITNESS: My belief is -- and I
19 believe we've been asking for an extension through
20 confirmation. The reason we've been doing so is
21 because we believe confirmation is the deadline
22 that aligns all leverage that the parties have
23 together in trying to get to a deal.

24 As we get closer to the confirmation
25 date, that deadline, you know, becomes a little

1 bit tighter. We've made progress over the last 60
2 days or so, but there's a lot more work to do.

3 THE COURT: I thought you said that the
4 gap with the second lien noteholders wasn't that
5 great.

6 THE WITNESS: It is not, and I think it
7 can be bridged relatively quickly.

8 THE COURT: But it's going to take from
9 August 29th until January to do that?

10 THE WITNESS: I think it will take a
11 number of months to do that. And the reason is,
12 getting to an economic agreement, the period from
13 when that happens to the time period that you
14 actually have a signed RSA, and then line that RSA
15 up so that it works with all the other RSAs and
16 creditor groups, takes months.

17 We've essentially had an economic
18 agreement with the 1L noteholders, for example,
19 throughout the course of the summer, but the CIE
20 transaction, as well as other negotiations around
21 the terms of the deal, have taken significantly
22 more time than originally expected.

23 THE COURT: There was a time when the
24 debtors were asking for an injunction only until
25 60 days after the examiner's report was issued,

1 right?

2 THE WITNESS: I believe that that's the
3 case.

4 THE COURT: Right. Was that -- that
5 must have been sought on some different theory,
6 then.

7 THE WITNESS: I think the theory, then,
8 if I remember correctly, was that we had a number
9 of months until the examiner's report, during
10 which there would be negotiations and then, you
11 know, a short period thereafter to try to get to a
12 deal.

13 Now that we're, you know, four or five
14 months away from the confirmation hearing, my view
15 is, you know, having been involved in all of these
16 negotiations, is that we're going to need that
17 time to both get to an economic agreement and then
18 align all the RSAs, get them signed so that we go
19 into a consensual confirmation.

20 THE COURT: Go ahead, Mr. Zeiger.

21 MR. ZEIGER: Thank you, Your Honor.

22 BY MR. ZEIGER:

23 Q Just following up on His Honor's one
24 question the judge just asked you. Who would the
25 confirmation deadline apply to?

1 A It would apply to all the creditors, as
2 well as the subjects of the debtors' litigation.
3 So that would be CEC, CAC, and various
4 subsidiaries, sponsors, officers and directors, et
5 cetera.

6 Q And how is that deadline different than
7 some of these other deadlines related to the 105
8 and the guaranty litigation?

9 A It's really only applicable to certain
10 parties in this case, so it sort of puts out a
11 balance in the overall negotiation.

12 Q Following up on one other point that
13 the judge asked you about before with respect to
14 the additional noteholders -- second lien
15 noteholders who are supporting the 2L RSA, even
16 though they're not signatories to those 2L RSAs.
17 Do you recall those questions?

18 A Yes.

19 Q And I believe you said that, to the
20 best of your recollection, there were -- that
21 issue was addressed in the RSAs.

22 A Yes.

23 Q Do you recall that?

24 A Yes.

25 Q If you turn, sir, to Plaintiff's

1 Exhibit 4, which is the first lien bank RSA that
2 we looked at earlier.

3 Let me know when you're there.

4 A I've got it.

5 Q Okay. If you turn to page 13, there is
6 a section 2 there in bold that says, "Commitment
7 of restructuring support parties." Do you see
8 that?

9 A I'm sorry. Could you repeat that?

10 Q Sure. On page 13 of Plaintiff's
11 Exhibit 4, there is a section 2 that says,
12 "Commitment of restructuring support parties." Do
13 you see that?

14 A I've got it, yeah.

15 Q And then under that, there is a series
16 of affirmative covenants, right?

17 A Yes.

18 Q And what generally are affirmative
19 covenants?

20 A There are things that the parties must
21 do under this particular document.

22 Q And if you look down at -- 2(a) says,
23 you know, "Subject to the terms and conditions
24 hereof for the duration of the restructuring
25 support period, each restructuring support party

1 shall" and if you go down to (iii), it says,
2 "support and complete." And then it continues on,
3 "the restructuring and all transactions
4 contemplated under the plans, the definitive
5 documentation, and this agreement and, as
6 applicable, vote in favor of the plans when
7 properly solicited to do so under the Bankruptcy
8 Code all claims." And it continues on from there.
9 Do you see that?

10 A Yes.

11 Q And if you look to the definition of
12 claims on page 6. Let me know when you're there.

13 A Got it.

14 Q Page 6 defines claims as "any claim
15 identified on a party's signature block hereto on
16 account of indebtedness issued by CEOC pursuant to
17 the credit agreement, the second lien indentures"
18 --

19 THE COURT: It says "first lien
20 indentures," doesn't it?

21 MR. ZEIGER: I'm sorry, Your Honor.
22 You're correct.

23 BY MR. ZEIGER:

24 Q "The first lien indentures or the
25 non-first lien indentures or any other claim," and

1 it continues on from there, right?

2 A Yes.

3 Q Okay. And is that the provision that
4 you were recalling earlier from the first lien
5 bank RSA?

6 A Yes, it is.

7 Q And what's your understanding as to how
8 that provision -- or those two provisions work?

9 A It means that if one of the signatories
10 to this RSA holds other claims on the debtors,
11 they would support the plan with respect to those
12 other claims.

13 Q If you turn to Plaintiff's Exhibit 9,
14 which is the first lien notes RSA. When you get
15 there, we'll start on page 10.

16 A Okay. I've got it.

17 Q And just like the first lien bank RSA
18 we saw, there's a section 2 that's entitled,
19 "Commitment of restructuring support parties." Do
20 you see that?

21 A I do.

22 Q And under that, there's a series of
23 affirmative covenants just like we just saw,
24 right?

25 A Yes.

1 Q And under (iii), there's a similar
2 provision to the one we just looked at, right?

3 A Yes.

4 Q Just to finish this off, if you go to
5 page 4, there's a definition of claims that
6 includes that same "any other claim" concept we
7 just looked at.

8 A Yes.

9 Q And is this the provision you had in
10 mind with respect to the first lien notes RSA?

11 A Yes, it is.

12 Q Now, if we go back to PDX-1, there's
13 that line for the second lien notes RSA at the --
14 three lines from the bottom. Do you see that?
15 I'll give you a minute to get there.

16 THE COURT: Which line are we looking
17 at?

18 MR. ZEIGER: Three lines from the
19 bottom, Your Honor. 2L notes.

20 THE COURT: Right.

21 THE WITNESS: Yeah, I've got it.

22 BY MR. ZEIGER:

23 Q And under Amount of Claims Supporting
24 the Restructuring, it lists \$2.047 billion. Do
25 you see that?

1 A Yes, I do.

2 Q And does that amount include both the
3 signatories to the RSA as well as those who are
4 supporting the second lien RSA through those
5 provisions we just looked at?

6 A Yes, it does.

7 Q Okay. Let's talk for a moment about
8 contributions.

9 What role, if any, have you had in
10 valuing the contributions from CEC and other
11 parties that are contemplated under the proposed
12 plan of reorganization?

13 A I have led the team that did the
14 valuation of the contributions.

15 Q And were you here for Mr. Millstein's
16 testimony in June when he testified that the
17 Millstein valuation of the contributions was
18 between 2.1 and \$6.7 billion?

19 A Yes, I was.

20 Q And for a midpoint of \$4 billion,
21 right?

22 A Correct.

23 Q And has the Millstein valuation of
24 these contributions changed since June?

25 A No, it has not been updated.

1 directors, et cetera.

2 THE COURT: Well, it sounded to me as
3 if the question was what the sponsors could
4 contribute and in what form.

5 And the answer that you got after
6 waiting a couple of weeks was, that's not our
7 problem; that's a CEC problem.

8 Isn't that what you testified?

9 THE WITNESS: Yeah.

10 THE COURT: Okay.

11 THE WITNESS: Yeah, I don't
12 particularly agree with that.

13 THE COURT: But that's what they told
14 you?

15 THE WITNESS: That's what we heard.

16 THE COURT: All right.

17 BY MR. BENNETT:

18 Q We may have to go into more detail
19 about this later, but is it still the case that
20 Millstein & Co. has done no work at all to
21 determine what any individual defendant can
22 contribute to settle the claims against that
23 defendant?

24 A That is not a hundred percent correct.
25 And the reason is that insurance companies provide

1 insurance to directors and officers. So we look
2 to the insurance companies, assume that they would
3 likely pay first, before individuals would.

4 THE COURT: I was going to ask about
5 insurance companies, unless you'd like to.

6 MR. BENNETT: I'm going to get there
7 sooner or later.

8 But by all means...

9 THE COURT: No, no, I've injected
10 myself far too frequently.

11 MR. BENNETT: No, no. It's been fine.

12 THE COURT: Go ahead.

13 BY MR. BENNETT:

14 Q Excluding insurance, is it the case
15 that Millstein & Company has still done no work to
16 determine what any individual defendant can
17 contribute to settle claims against that
18 defendant?

19 A Correct. We haven't done any due
20 diligence on individuals' financial position.

21 Q Okay. Staying on the topic, but I'm
22 going to turn to the 2L RSA for a little while.
23 And I want to just make sure, just like at your
24 deposition, that we all understand that the 2L RSA
25 means the one announced on August 1st and not the

1 one from last year, okay?

2 A Yes.

3 Q I'm going to call it the 2L or second
4 lien RSA, okay?

5 And we can get to it if we need to --

6 MR. BENNETT: What is the exhibit
7 number for the -- it's already been admitted?

8 MR. MESTER: DPX 6.

9 BY MR. BENNETT:

10 Q So if you get out PX 6, because I don't
11 want to tax your memory, but I don't know how much
12 we're really going to have to refer to it, but PX
13 6, the second lien RSA.

14 And isn't it the case that there's
15 something called a non-Caesars contribution amount
16 in the 2L RSA?

17 A Yes.

18 Q That's a definition, right?

19 A Yes.

20 Q And isn't the effectiveness of the RSA
21 conditioned on many things, but one of the things
22 it's conditioned upon is the receipt of something
23 called the non-Caesars contribution amount; is
24 that correct?

25 A That's correct.

1 anywhere in the disclosure statement?

2 A No, I don't believe so.

3 Q And is it the case that the amount of
4 the non-Caesars contribution amount has not been
5 determined?

6 A That's correct.

7 Q And neither you nor anyone else at
8 Millstein & Co. has asked anyone for a non-Caesars
9 contribution amount?

10 A That's incorrect.

11 Q Who have you asked for one?

12 A We just -- we just discussed -- we
13 talked to CEC representatives about fully funding
14 the 2L RSA.

15 Q That was the same meeting two weeks ago
16 we're talking about?

17 A Correct. Yes.

18 Q I apologize. Let me change the
19 question.

20 Apart from the meeting you already
21 testified to that took place roughly two weeks
22 ago, neither you nor anyone else at Millstein &
23 Co. has asked anyone for a non-Caesars
24 contribution amount?

25 A That's correct.

1 Q And excluding that meeting, has anyone
2 at CEOC or working for CEOC asked anyone for a
3 non-Caesars contribution amount?

4 A I don't know whether others related to
5 CEOC have asked the sponsors -- or, excuse me, the
6 sponsors or other parties for the non-Caesars
7 contribution amount.

8 Q But you don't know of any such request
9 or demand?

10 A I don't know of what now?

11 THE COURT: We're 20 months into this
12 case. How could this not have occurred to
13 somebody until just in the past few weeks?

14 THE WITNESS: Because we have -- our
15 focus has been total contributions, and we have
16 not -- we have not necessarily concerned ourselves
17 with whether it comes out of, you know, person A's
18 pocket or person B's pocket, provided that the
19 overall settlement currency is sufficient.

20 THE COURT: Well, I guess that makes
21 sense if you're only concerned about the top
22 level. But if you start looking into the wallets
23 of more people, you're likely to end up with more
24 money, aren't you? So the contribution could have
25 been greater, couldn't it?

1 THE WITNESS: Ultimately what we're
2 settling here is the estate claims against all of
3 those parties together. And there is -- my
4 understanding, based on discussions with counsel,
5 there is one number in terms of overall damages
6 associated with the claims.

7 So if we get sufficient settlement
8 currency related to those claims to settle those
9 claims, it does not matter whether it's coming
10 from, again, person A, person B, person C.

11 THE COURT: But a settlement, my
12 experience, usually involves payment of less than
13 the total liability, right?

14 THE WITNESS: That's correct.

15 THE COURT: And a settlement is more
16 likely to be accepted the more the settlement
17 amount tends to approach that liability, correct?

18 THE WITNESS: That is correct.

19 THE COURT: And, still, there was no
20 thought to approach any of these other parties
21 potentially liable to the estate to see what they
22 could contribute?

23 THE WITNESS: No. And one of the
24 reasons for that is the contribution levels go up,
25 as the recoveries go up, it puts more and more

1 And the second lien noteholder group,
2 there's an RSA outstanding that allows all second
3 lien noteholders, if they choose to get a 55 cent
4 recovery, which is \$900 million more than exists
5 under the current plan, or roughly 16 cents on the
6 dollar improvement.

7 Q But the 900 doesn't exist right now.
8 The only increased consideration that exists right
9 now is the -- is 60 of the 963 million advertised
10 at the bottom of PDX 1; is that correct?

11 A No. I believe that the 900 million can
12 be fully funded. I've explained that to the
13 parties in this case. It's just a matter of
14 further negotiations.

15 Q But it's not fully funded now.

16 A Correct, it's not.

17 Q And it's solely within CEC and its
18 Strategic Alternatives Committee's discretion as
19 to whether that deal will ever get done?

20 A It's really up to the parties to get
21 back together, sit in a room and negotiate a deal.
22 And I think it can be done.

23 THE COURT: Why do you think so?

24 THE WITNESS: Because I testified
25 earlier that we're only a few points apart from

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE:) No. 15 A 00149
)
CAESARS ENTERTAINMENT) Chicago, Illinois
OPERATING COMPANY, INC.,) August 24, 2016
) 10:24 a.m.
Debtors.) 2:00 p.m.

VOLUME II (Pages 1 - 320)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE A. BENJAMIN GOLDGAR

APPEARANCES:

For the Debtors: Mr. Jeffrey Zeiger;
Mr. David Zott;
Mr. Scott Lerner;

For WSFS: Mr. Sidney Levinson;
Mr. Joshua Mester;
Mr. Geoffrey Stewart;

For Trilogy: Mr. Frank Velocci;

Court Reporters: AMY M. SPEE, CSR, RPR, CRR
JERRI ESTELLE, CSR, RPR
United States Courthouse
219 South Dearborn Street
Room 661
Chicago, Illinois 60604

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1 and then his staff went to leg. counsel. We never
2 directly, with regard to that drafting, met with,
3 talked to or -- House leg. counsel.

4 Q Okay. You just talked to Congressman
5 Hardy?

6 A Yeah.

7 Q Who are some of the other members of
8 Congress you spoke with?

9 A I mean -- and, again, you only need to
10 look at a -- a House directory. I think I met
11 with or talked to almost every Republican member
12 of the House Financial Services Committee, senior
13 members of the House Financial Services
14 Appropriations, folks and the Speaker both at the
15 tail end -- excuse me --

16 Q Boehner.

17 A -- Boehner, Ryan, McCarthy, Scalise.
18 Then a significant number similar in the Senate
19 and some folk on the Transportation Committees,
20 both the approps and the -- the commerce
21 committee, where the transportation bill flowed in
22 the Senate. Senator McConnell, probably not
23 Cornyn; and talked to, ironic for me, Senator
24 Reid's office a significant number of times.

25 Q Okay. When you say "significant

1 number," how many? What does that mean?

2 A I have no idea. I mean, a lot.

3 Q Altogether how many members on the
4 House side did you -- did speak with?

5 A Well, members and staff?

6 Q Yep. Uh-huh.

7 A Probably 30-plus.

8 Q And on the members and staff, senators
9 and staff?

10 A Probably seven to ten.

11 Q Okay. I know I should say -- oh, I'm
12 sorry. Okay.

13 A You know I should say the Indian
14 Affairs, the National Resources, and the -- its
15 equivalent committee in the Senate.

16 Q Uh-huh.

17 A In addition to those other committees.

18 Q Why Indian Affairs?

19 A Well, National Resources. I corrected
20 myself. It wasn't -- it -- so it should be
21 Natural Resources, not Indian Affairs.

22 Q Why Natural Resources?

23 A Oh, because the last efforts that we
24 endeavored were on the Puerto Rico bailout bill or
25 kind of -- or rescue bill.

1 A Yes.

2 Q -- matter which we've already
3 discussed. Okay. Good.

4 So I think you -- oh, let me ask
5 another question. At any point did you arrange or
6 intend or become aware of any meetings in
7 connection with the TIA amendment or modification
8 attended by representatives of Apollo Global
9 Management?

10 A So really -- yes.

11 Q Okay. What meetings were those?

12 A I believe that the -- Marc Rowan
13 attended two meetings of the TIA. I am just kind
14 of refreshing my -- you know, kind of remembering.

15 Q Were you at those meetings, too?

16 A Yes.

17 Q Who were the meetings with?

18 A I believe one was with Maxine Waters.

19 Q Okay. When was that?

20 A It was -- you know, I don't know the
21 definite date, but March/April of this year.

22 Q So that was in connection with PROMESA?

23 A Yeah -- well, yes, and broader, because
24 it wasn't just limited to PROMESA, TIA, you know,
25 he had been doing -- he does kind of memo

1 meetings, you know, on broad issues all the time.

2 Q Okay. How long did the Maxine Waters
3 meeting last?

4 A Typical meeting? 30 minutes, maybe.

5 Q Who was there from Congress besides
6 Representative Waters?

7 A She had a room full of -- there were
8 probably six or seven staffers.

9 Q Where were matters left at the end of
10 the meeting between Mr. Rowan and Representative
11 Waters?

12 A "Nice to meet you."

13 Q What was the second meeting?

14 A Probably with representative Kevin
15 McCarthy from -- from California.

16 Q Okay. When was that?

17 A Again, it was in the same stretch. So
18 probably April of this year.

19 Q And the subject, once again, was
20 amendment of the TIA?

21 A Again, more broadly. I know they
22 talked about market conditions, busy cycle, series
23 of things, so it wasn't -- neither meetings were
24 just limited to or focused on -- you know, on the
25 TIA.

Q But the TIA was discussed, was it not?

A Yes.

Q Okay. How long did the meeting with Representative McCarthy last?

A Probably around the same 30 minutes.

MR. STEWART: Let's go to page 92, line 14.

BY MR. STEWART: (Reading)

Q Okay. But you are aware, are you not, that in March of this year, you are the -- the examiner was appointed by the bankruptcy judge.

A Yes.

Q Are you aware -- do you know who the examiner was, by the way?

A No.

Q Were you aware that in March, the -- March 16th, the examiner filed his report?

A Yes.

Q Did you read that report?

A Not in whole.

Q See any part of it?

A Yes.

Q What part of it did you look at?

A You know, I know someone sent it in an e-mail. I may have glanced at it, the full

1 binder in front of you.

2 A I'm sorry, DX 12?

3 Q DX 12, yes.

4 And if you can tell me what DX 12 is.

5 A DX 12 appears to be the adversary
6 complaint that the debtor, CEOC, filed against a
7 number of parties.

8 MR. LEVINSON: Your Honor, I'd move
9 Exhibit DX 12 into evidence.

10 MR. ZOTT: No objection, Judge.

11 THE COURT: Defendants' 12 is admitted.

12 MR. LEVINSON: Thank you, Your Honor.

13 BY MR. LEVINSON:

14 Q Mr. Hilty, of the defendants -- do you
15 know how many defendants are named in this
16 lawsuit?

17 A I believe it is 67.

18 Q Now, you heard Mr. Hayes testify at
19 length yesterday that he believes the sponsors are
20 making a contribution to settlement because,
21 according to Mr. Hayes, the value of their
22 ownership interest in CEC and CAC will be reduced.

23 Do you recall that testimony?

24 A I do.

25 Q If you would turn in your binder to PDX

1 2. It's the third tab. This was admitted for
2 demonstrative purposes during the hearing
3 yesterday.

4 Have you reviewed this demonstrative
5 exhibit?

6 A Yes, I have.

7 Q And when did you first see this
8 document?

9 A I saw it Monday morning of this week.

10 Q Do you agree with the analysis and
11 conclusions that are set forth in this
12 demonstrative exhibit?

13 A No, I do not.

14 Q And can you explain why?

15 A Certainly. For a couple reasons, the
16 first being we heard, actually, a number of times
17 yesterday from Mr. Hayes that the debtors are
18 looking at everything holistically in terms of
19 they're not looking at contributions from one
20 party or trying to allocate contributions to one
21 party.

22 But yet this page attempts to basically
23 bring the expense or the value of the shares that
24 new CEC is issuing. It basically looks to
25 attribute those to the sponsors by saying it's a

1 cost to the sponsors. But we had heard they don't
2 allocate things to the individual parties.

3 So that's the first thing I thought was
4 very unusual about this page.

5 Q Okay. And I'd like to, if I could,
6 direct your attention to the line where it says
7 current value of sponsor holdings of CEC/CAC. And
8 it says \$4 billion.

9 Do you see that?

10 A I do.

11 Q Okay. And do you agree or disagree
12 with the analysis and conclusions that led to the
13 inclusion of that line in Demonstrative Exhibit 2?

14 A I disagree with it.

15 Q And can you explain why?

16 A Certainly. This analysis is really an
17 equity dilution analysis. It's showing what
18 happens to the CEC shareholders by CEC -- or new
19 CEC, I should say, which is the combination of CEC
20 and CAC having to issue shares to settle claims
21 against it.

22 What it does here, when it is trying to
23 start by saying what's the current value of the
24 sponsor holdings in CEC and CAC, it's looking at
25 and, it was used yesterday, intrinsic value

1 number. But that value, as was discussed,
2 reflects absolutely no risk, or, I guess, no risk
3 or no impact of the claims of the guaranty
4 litigation that are claims against CEC.

5 This \$4 billion number, it basically
6 assumes that there is no risk to CEC and CAC of
7 the guaranty litigation.

8 And I don't think that's a proper way
9 to start in terms of evaluating, you know, how
10 dilution is occurring, because this number would
11 be an -- this number would be an extreme how
12 Apollo or TPG, the sponsors, would try to argue
13 that their shares are being diluted.

14 It's not trying to look at it from the
15 market value today, which affects -- which brings
16 in all the risks of litigation continuing, one
17 side losing litigation, the other side losing
18 litigation, injunctions being continued. All of
19 that is information known to the market.

20 So in my view, you can't look at the
21 dilution in terms of the impact to current
22 shareholders by looking at a number which doesn't
23 reflect any risk of liabilities or disputes that
24 are against it.

25 Q So, in other words, the \$4 billion

1 number doesn't take into account the fact that CEC
2 is potentially liable on the guaranty claims that
3 are the subject of this proceeding?

4 A Correct. It doesn't try to risk adjust
5 it, which I would argue that's what the market is
6 doing when it values the existing CEC and CAC
7 shares. It's risk adjusting in buyers' and
8 sellers' minds what's going to happen with the
9 litigation claims, an injunction, a settlement.
10 It's the market's view of those risks.

11 This \$4 billion number takes the
12 complete other side of that and looks at it on an
13 extreme that there is basically no value at all to
14 the litigation claims of the -- not only the
15 guaranty litigations, but also the estate claims.
16 It effectively assumes that there's no claims
17 against us.

18 The other side, the other extreme, to
19 see the other side of this, would actually be
20 saying the \$4 billion is worth zero because
21 there's \$11 billion of guaranty claims and even
22 more claims from the estate that are against this
23 value.

24 So this is, say, the far left. It's
25 not talking about the far right, and it's not also

1 **talking about some risk-adjusted number in the**
2 **middle.**

3 **If I was trying to evaluate what's the**
4 **dilution that the existing CEC or CAC shareholders**
5 **are facing, I would try to look at a number that**
6 **is at least risk adjusted to reflect there's some**
7 **likelihood that the liabilities are real**
8 **liabilities against CEC and CAC.**

9 THE COURT: Well, if the market price
10 takes care of factoring in risk, then why can't we
11 just use the market price and multiply it times
12 the number of shares and get a valuation that way?

13 THE WITNESS: That's how I would have
14 done this analysis. I would have started with the
15 market price.

16 THE COURT: So you would agree with the
17 \$1.68 billion number that I think Mr. Hayes agreed
18 would be the result of that calculation?

19 THE WITNESS: Yes, in terms of the
20 value, the market value of the sponsors' equity
21 interest in CEC and CAC, yes. I would generally
22 agree with that, as of Friday, but, yes.

23 THE COURT: Could you tell me, and I
24 should have asked Mr. Hayes this question, what
25 you mean by intrinsic value? What does that mean?

1 THE WITNESS: Well, I'm happy to say it
2 was his term and not mine.

3 THE COURT: Ah. Well, you used it, so
4 I figured you knew.

5 THE WITNESS: I believe what he was
6 trying to say is intrinsic value is a calculated
7 value, not looking at the market prices or things
8 like that.

9 It's using -- whether it's using an
10 comparable company valuation methodology,
11 transaction multiples from comparable
12 transactions, or discounted cash flow, it's using
13 other valuation methods to come up with a gross
14 value of an asset. In this case, I guess CERP and
15 CGP. And then he was trying to, again, as I said,
16 as he described, look at it assuming there was no
17 liabilities against it.

18 That's not the reality today. Today
19 there are liabilities against it, or at least
20 disputed liabilities against it, whether it's the
21 estate claims or whether it's the guaranty claims,
22 which, again, I view that the market is taking
23 that into -- that into view when it comes up with
24 the market prices.

25 THE COURT: So intrinsic value is not a

1 technical term generally used in corporate finance
2 circles; it's a Brendan Hayes term from his
3 testimony here?

4 THE WITNESS: I don't commonly use the
5 word intrinsic value when I'm --

6 THE COURT: Talking about shares?

7 THE WITNESS: When I'm talking about
8 shares or anything like that.

9 THE COURT: All right. Go ahead,
10 Mr. Levinson.

11 MR. LEVINSON: Thank you, Your Honor.

12 BY MR. LEVINSON:

13 Q And in the market that -- the
14 marketplace that the court just described, would a
15 potential purchaser of the shares in that market
16 take into account the liabilities of CEC and CAC,
17 including the guaranty litigation claims and the
18 estate claims that exist?

19 A Absolutely. That's what's factored
20 into the market prices.

21 Q If you were advising the debtors in
22 this case and assisting them in preparing PDX 2,
23 what approach would you have used to value the
24 stock?

25 A I would use the market price.

1 Q And in terms of putting this chart
2 together, again, if you were representing the
3 debtors, would you -- would the goal be to try to
4 come up with something objective, or would the
5 goal be to try to come up with something that
6 provides, you know, one extreme or the other
7 extreme, the two extremes that you described?

8 A Well, again, if I was trying to share
9 what I thought the estimated dilution would be to
10 the shareholders, I would look at it off of,
11 again, a risk-adjusted valuation, which I believe
12 that is the market prices.

13 This is looking at it, as I mentioned,
14 on an extreme, and, again, as I said, quite
15 frankly, the extreme that Apollo and TPG as the
16 sponsors would look at it, which assumes there's
17 zero likelihood of any of the CEOC estate claims
18 or the guaranty claims being valid claims.

19 Q Now, I'd like to show you Plaintiff's
20 Exhibit 17. It's in your binder, PX 17.

21 And what is this document?

22 A This is the CEC quarterly report filed
23 with the SEC for the period ended June 30th,
24 2016.

25 Q And is this one of the documents upon

1 which you relied in formulating the views you've
2 expressed today?

3 A Yes, it's one of the documents I
4 reviewed.

5 MR. LEVINSON: Your Honor, I move to
6 admit Plaintiff's Exhibit 17.

7 THE COURT: I assume there's no
8 objection?

9 MR. ZOTT: No objection, Your Honor.

10 THE COURT: Plaintiff's 17 is admitted.
11 BY MR. LEVINSON:

12 Q If you would turn to page 17 of Exhibit
13 PX 17.

14 A Yes.

15 Q Do you see the highlighted portion of
16 this exhibit?

17 A I do.

18 Q And this was highlighted by the
19 plaintiff.

20 Can you read the first sentence of the
21 highlighted text.

22 A (As read)

23 "We believe that the noteholder
24 disputes in the parent guaranty lawsuits have a
25 reasonably possible likelihood of an adverse

1 outcome."

2 Q And is it your understanding the parent
3 guaranty lawsuits include the lawsuits that the
4 debtors are seeking to enjoin in this proceeding?

5 A Yes, I do.

6 Q And can you read the last line of the
7 highlighted text.

8 A (As read)

9 "We are not able to estimate a range of
10 reasonably possible losses should any of the
11 noteholder disputes ultimately be resolved against
12 us, although they could potentially exceed
13 \$11 billion."

14 Q Would a potential purchaser of the
15 sponsors' interest in CEC take that liability into
16 account in determining how much to pay for the
17 stock, or would they simply ignore it in the
18 manner suggested by Plaintiff's Demonstrative
19 Exhibit 2?

20 MR. ZOTT: I think that
21 mischaracterizes the demonstrative. I'll object
22 to that, Judge.

23 THE COURT: I'll overrule it.

24 THE WITNESS: Yes. I do think
25 potential purchasers would take into account the

1 potential liabilities against CEC.

2 BY MR. LEVINSON:

3 Q Now, do you subscribe to Mr. Hayes'
4 suggestion during his testimony that the market
5 price doesn't reflect what he -- his term,
6 intrinsic value, because the market is pricing the
7 possibility of a settlement?

8 A I don't agree with that. As I said, I
9 think the market, the market prices in all
10 information that's available to it. There isn't a
11 settlement right now. Could there be the prospect
12 of a settlement? Yes. Could there be the
13 prospect that there is not a settlement? Yes.

14 And the market, I think, appreciates
15 that and understands that, sees the potential for
16 the guaranty litigation continuing, sees some risk
17 that the guaranty litigation is stayed. It's
18 factoring in all of those risks and coming up with
19 what the market prices are.

20 Q I think you testified a few minutes ago
21 you agreed with the stock -- the market value
22 that -- which Mr. Hayes testified on Friday, the
23 \$1.67 billion figure for the CEC and CAC current
24 interest in the shares of those companies?

25 A Yes. That's the approximate market

1 value for what the sponsors have in those
2 entities.

3 Q Have you done any work to determine
4 peak market value of the sponsors' interest in CEC
5 and CAC since the commencement of these bankruptcy
6 cases?

7 A Yes. We've gone back and looked at the
8 market prices of the CEC and CAC shares on each
9 day in terms of what the total market value would
10 be on each day, and then also what the market
11 value would be for the sponsors' holdings.

12 Q And what was the peak market value of
13 the combined shares of CEC and CAC during the
14 period since the commencement of this case?

15 A My recollection is approximately
16 1.8 billion, and it was back in June of this year.

17 Q And that compares to the 1.67 billion
18 figure as today's current market value?

19 A Yes, that's correct.

20 Q And if that 1.8 billion -- if we go
21 back to Plaintiff's Demonstrative Exhibit 2, is
22 that 1.8 billion higher or lower than the
23 \$2 billion post-confirmation pro forma value of
24 the sponsors' holding at plan value that's shown
25 in that exhibit?

1 A Slightly lower.

2 Q Now, let's suspend reality for a
3 moment, and let's just assume hypothetically that
4 the chart in Plaintiff's Demonstrative Exhibit 2
5 is correct, such that the current value of the
6 sponsors' overall interest in CEC and CAC really
7 was \$4 billion currently, and that the value of
8 the sponsors' overall interest in CEC and CAC
9 would decline in value as a result of the plan.

10 My question is this: Would you regard
11 that reduction in value as a contribution by the
12 sponsors?

13 A No, I would not.

14 Q Why not?

15 A Again, if you look at this chart, what
16 this chart is doing, although it's actually not
17 presenting the full picture, this is a dilution
18 analysis of new CEC, which is going to be CEC and
19 CAC combined, having to issue new shares to settle
20 claims against it.

21 Q "It" being?

22 A It being new CEC or CEC and CAC, as it
23 looks here.

24 Those new shares dilute the holdings of
25 the existing shareholders, all of the existing

1 shareholders, not just the sponsors. It also
2 would dilute the public shareholders of CAC and
3 CEC.

4 So to really look at this chart
5 correctly, you actually need another column to the
6 right of this where this just shows the 62 percent
7 of CEC and CAC owned by the sponsors. There's the
8 remaining 38 percent that is owned by the public
9 shareholders of CEC and CAC.

10 And, again, since it's new CEC issuing
11 these shares, the public shareholders of CEC and
12 CAC are also being diluted, if you assume this
13 math is correct, on the exact same ratio, because
14 the shares are all being treated equally because
15 this is just new CEC issuing more shares.

16 So, you know, again, if you start with
17 the premise of the 4 billion, which I don't, but
18 the 4 billion would be getting diluted to \$2
19 billion, the value of the public shares would also
20 be getting diluted down on the same 50 percent
21 ratio because there's just more total shares
22 outstanding.

23 THE COURT: Why would that mean that
24 there's not a contribution, though? Why wouldn't
25 it just mean that there are a whole lot more

1 contributors? You have additional contributors
2 being the public shareholders.

3 THE WITNESS: I don't -- you can't look
4 at it that way, because this is new CEC, or CEC
5 and CAC basically discharging a liability against
6 it. There are guaranty claims and estate claims
7 against it. It's issuing shares to basically get
8 itself out of that liability.

9 So by its nature, since it's paying
10 off a liability against its corporation by issuing
11 new shares, that's going to dilute the ownership
12 and the value of the existing shareholders because
13 it's paying off a liability. It might be a
14 disputed liability, but it's still a liability.

15 So this is not the sponsors
16 contributing. This is CEC, the corporation,
17 extinguishing a liability. And I think the fact
18 that the public shareholders are also diluted in
19 the exact same way shows that this is a corporate
20 liability of CEC/CAC that's being extinguished,
21 not anything else.

22 THE COURT: So you have to credit the
23 extinguished liability in some way in order to get
24 a number that makes sense?

25 THE WITNESS: Correct. Because, for

1 example, there aren't any claims against the
2 existing public shareholders of CEC or CAC.

3 THE COURT: Right.

4 THE WITNESS: They're just being
5 diluted because the corporation is having to issue
6 more shares in order to satisfy a liability. So
7 all shareholders get diluted equally. It's not
8 the sponsors contributing.

9 THE COURT: Continue, Mr. Levinson.

10 MR. LEVINSON: Thank you, Your Honor.

11 BY MR. LEVINSON:

12 Q So applying the debtors' logic, you
13 applied the debtors' logic to the public
14 shareholders, how would that logic apply to, say,
15 the second lien noteholders and their treatment
16 under the debtors' plan of reorganization?

17 A Well, it's only the same logic if you
18 assume the second lien claim is roughly 5 1/2
19 billion. And I guess for easy math, assume the 2L
20 RSA that's not effective, but even if it gets to
21 over 50 percent, it roughly -- that proposes to
22 provide them 50 percent.

23 Under the same logic, if the second
24 lien noteholders are losing 50 percent of their
25 claim, the way this is describing things, the

1 other liabilities against it.

2 So I actually -- it's my view that the
3 guaranty litigation continuing will actually
4 encourage third-party defendants to contribute
5 more to reaching a settlement of the claims
6 against them because they perceive more risk that
7 CEC is going to have to use more of its value to
8 cover the guaranty claims.

9 Q Now, how does the fact that the
10 guaranty plaintiffs are receiving nothing on
11 account of their guaranty claims under the plan,
12 coupled with the fact that, you know, none of the
13 defendants, other than CEC, and to a small extent
14 CAC, are making contributions under the plan, how
15 does that impact the willingness of the guaranty
16 plaintiffs to acquiesce to the terms of the plan
17 proposed by the debtors?

18 A I think it makes it more difficult.

19 Q Why is that?

20 A Those parties see a limited number of
21 parties participating effectively in the CEOC
22 plan, even though they have the examiner report
23 saying they might have potential liability.

24 So when you've got the guaranty
25 plaintiffs and the second lien noteholders seeing

1 that, I think it's hard to, you know, encourage
2 settlement when they see, you know, a number of
3 other third parties not contributing.

4 Q Basically it's that people just don't
5 like to be treated unfairly, is that kind of what
6 you're saying in a nutshell?

7 A I think that's generally correct, yes.

8 Q And that that can impact trying to get
9 to a deal --

10 A Yes, absolutely.

11 Q -- when a party believes that to be the
12 case?

13 A Absolutely.

14 Q In arriving at your view that the
15 guaranty plaintiffs want to be treated fairly,
16 have you analyzed whether claims against the
17 non-contributing 65 defendants, and the other
18 potential defendants, are even collectible?

19 A We haven't.

20 Q You have not. And why is that?

21 A We haven't received any of the
22 financial information on the defendants in order
23 to assess the collectibility of them.

24 Q And what efforts are you aware of by
25 the noteholder committee to seek through discovery

1 would be voted, are those the same CAC claims that
2 are the basis for the small contribution -- or the
3 relatively small contribution of 44 to 79 million
4 in waiving that claim that was described earlier
5 in your testimony, or do you not know that without
6 looking it up?

7 A No, I believe those are the same
8 claims.

9 Q Let's turn to the 2L RSA, which was
10 also the subject of Mr. Hayes'--

11 THE COURT: Before we do that and we're
12 changing the subject, this might be a good time
13 for a break.

14 MR. LEVINSON: Of course, Your Honor.

15 THE COURT: Okay. So let's take 15
16 minutes.

17 (Brief recess.)

18 THE COURT: Mr. Levinson, please
19 continue.

20 MR. LEVINSON: Thank you, Your Honor.
21 BY MR. LEVINSON:

22 Q Mr. Hilty, do you regard the 2L RSA
23 among the debtors, CEC, and certain holders of
24 second lien notes, as material progress?

25 A No, I do not.

1 Q Why is that?

2 A It's actually for several reasons.

3 I'd say, first of all, it's not an
4 agreement that's effective or can go effective
5 based on the holders who have signed the amended
6 cooperation agreement.

7 Second, it has a funding hole, which
8 Mr. Hayes talked about yesterday, but a funding
9 hole which is -- basically provides in the
10 agreement among those who signed it, kind of an
11 agreement to agree on how the funding hole is
12 going to be satisfied. And if parties aren't
13 satisfied with how it's proposed to be funded, the
14 agreement -- that those parties won't even be
15 bound by the agreement, whether it goes effective
16 or not.

17 I would also say the second lien RSA
18 provides for some of the proposed additional
19 enhancements as fees. And it's not -- those
20 aren't fees that get paid to the entire class.
21 They just get paid to the parties that signed the
22 RSA.

23 And so I think when you are trying to
24 reach enhanced settlements or reach an overall
25 settlement with parties, those should be things

1 that are offered to the entire class, not just to
2 certain holders.

3 Q Just pause there.

4 Why is that?

5 A Well, I think you're trying to build
6 consensus among the whole class and have the class
7 treated equally. And here, you know, the second
8 lien claims are quite large bond issuances, and
9 you want to just make sure all the holders of
10 those issuances are treated equally. And so I
11 view a resolution as something that's provided to
12 the entire class, assuming the class votes in
13 favor for it.

14 In addition, I would also say the
15 second lien RSA I don't really view as progress in
16 that it took clearly some amount of time during
17 the stay period for them to reach agreement with
18 those other holders who also own other interests
19 and weren't just second lienholders. And I really
20 think that just delayed the discussions that CEC
21 and the debtors could have been having with the
22 second lien noteholder committee, which is what I
23 thought was going to be happening quite
24 extensively during the stay period.

25 Q You referenced that the parties to the

1 2L RSA are holders with other interests. What's
2 your understanding of who those parties are and
3 what their interests are?

4 A It's my understanding that four parties
5 signed the 2L RSA: Canyon, Mason, a Soros fund,
6 and Paulson. And all four of those entities not
7 only hold second lien notes, they also own equity
8 interest in CEC, or CAC, or both, and in other
9 instances also own significant other debt claims
10 in the CEOC bankruptcy.

11 Q And what's the basis for your
12 understanding as to those parties' ownership
13 interest?

14 A There's two bases. One, on the equity
15 interest side, we periodically look at Bloomberg
16 and other sources to see who has bought or built
17 positions in either the CAC or the CEC stocks, and
18 all of those names are listed as significant
19 holders in those stocks.

20 But, in addition, there was a
21 stipulation done for this hearing which actually
22 outlines the specific equity holdings of all those
23 parties, and also it details the actual debt
24 holdings, in addition to the equity holdings of
25 Canyon.

1 Q Now, you heard Mr. Hayes testify
2 yesterday that he didn't know if the four parties
3 to the 2L RSA are among the top ten shareholders
4 of CEC and CAC.

5 Do you recall that?

6 A I do recall that.

7 Q And have you undertaken to determine
8 that?

9 A Yes, we looked -- I looked at the
10 current Bloomberg list of the top shareholders.

11 Q And what did Bloomberg tell you as to
12 which of those parties are among the top ten
13 shareholders of CEC and CAC?

14 A My recollection is three of them are in
15 the top ten, both CEC and CAC, and the other ones
16 are either like 11 or 15, or something like that.
17 They're all within the top 20 for sure.

18 Q And do you recall how many were in the
19 top five?

20 A I believe three of the four in the top
21 five.

22 Q Three, or -- two, three, four?

23 A I --

24 Q Or you just don't --

25 A I don't recall.

1 Q Okay. Why does it matter whether the
2 parties to the 2L RSA also, for instance, own
3 stock in CEC and CAC in terms of your evaluation
4 as to whether or not this agreement reflects
5 progress?

6 A Well, it reflects that they have other
7 interests that they're going to be receiving value
8 from as part of this plan or the 2L RSA settlement
9 or a different settlement. But since they own
10 other interests which are impacted in this matter,
11 you just -- you need to know how they're receiving
12 additional value.

13 And so in this case, all of them will
14 be receiving value as shareholders, depending on
15 what the residual value is that either the CEC or
16 CAC shareholders retain.

17 And at least in the case of Canyon,
18 where we know their debt position based on, you
19 know, the stipulation, they actually own
20 dramatically more first lien note claims and first
21 lien bank claims than they own of even second lien
22 claims. So they're actually going to be receiving
23 much more significant value on account of those
24 claims than they are even for their second lien
25 note claims.

1 So it's just -- it's just helpful to
2 know because it allows you to see that parties who
3 own other interests also have different
4 motivations than just people who own second lien
5 note claims.

6 Q Are there circumstances where those
7 interests might possibly conflict with one
8 another?

9 A Yes, there are.

10 Q And can you describe that in the
11 context of the parties to the 2L RSA?

12 A Sure. In the case of parties that own
13 second lien notes and equity interests, whether
14 it's CAC or CEC equity interests since there's
15 going to be the merger, the more shares that -- as
16 part of an overall settlement, or the more or the
17 greater amount of convertible notes that need to
18 be issued to reach agreement, which would bring
19 more value to the second lien notes if those
20 additional shares and additional notes are given
21 to the second lien class, those would be taking
22 value away from CAC and CEC shareholders.

23 However, if you don't move additional
24 consideration to the second lien notes, or if you
25 move less consideration to the second lien notes,

1 people who own those shares will be receiving more
2 value for those shares that they own because new
3 CEC would be issuing less new shares to second
4 lien creditors and less convertible notes.

5 So when you own both, you're actually
6 receiving consideration on your second lien notes,
7 and you're also receiving consideration for your
8 CAC or your CEC shares. So you just need to know
9 their perspective of getting value in both
10 pockets.

11 And it's the same thing when someone
12 owns other debt claims in a situation like this,
13 such as Canyon, as is outlined in the stipulation,
14 where, you know, they own I believe it's over \$900
15 million of first lien note and bank claims that
16 they own, versus it's 400-and-something million
17 dollars of second lien note claims. So they
18 actually have, you know, over two times the size
19 of claims in first lien claims than they do in
20 second lien claims.

21 And as was highlighted in the chart we
22 looked at earlier, and what Mr. Hayes talked
23 about, those first lien claims are receiving a
24 dramatically higher recovery than the second lien
25 claims. All of those first lien claims are

1 receiving above par. So they're receiving
2 something above a hundred percent.

3 That clearly drives some motivation,
4 you know, if you own that much of them to -- for
5 example, just to try to reach a settlement so you
6 can try to move forward and realize the value
7 that's proposed to be given to your first lien
8 claims when they're over double the claim amount
9 that you own in second lien claims.

10 So when you're dealing with holders
11 that own other interests, you just need to know
12 what those other interests are because they're
13 going to be receiving value for that.

14 THE COURT: If you're about to move on,
15 I have some questions on this topic, but if you're
16 not, go ahead.

17 MR. LEVINSON: I have no more
18 questions, Your Honor.

19 THE COURT: This is not the first
20 second lien RSA in this case, am I right?

21 THE WITNESS: That's correct. There
22 was a second lien RSA --

23 THE COURT: About a year ago.

24 THE WITNESS: -- about a year ago, last
25 fall sometime, early fall sometime, I believe

1 that's correct.

2 THE COURT: And that required a certain
3 number of signatories to become effective, and it
4 never became effective, correct?

5 THE WITNESS: That's correct.

6 THE COURT: I don't know if you've
7 compared the two, but if you have, how does the
8 current one differ from where we were last year?

9 THE WITNESS: The current one does
10 offer if it does go effective and is funded,
11 because there's still the funding hole in it. If
12 it were to go effective and that funding hole
13 filled, it would offer greater consideration than
14 the one a year ago.

15 I'm trying to recall the specific
16 recovery percentage in the one a year ago, and I
17 don't exactly recall it. It is -- the current one
18 would be -- if funded and goes effective, would be
19 significantly greater than that one.

20 THE COURT: Do you know why it took,
21 what, something like six or seven months for
22 another second lien RSA even to be proposed?
23 Because as I recall, the first one lapsed, I
24 think, last October. And then this one came about
25 in July or so.

1 What was going on? Do you know?

2 THE WITNESS: Well, there was the
3 examiner report that came out in between those
4 two -- those two events.

5 THE COURT: That's true.

6 THE WITNESS: So I think there was
7 probably between the first one expiring and before
8 people then engaged in the next one, at least
9 people not on the noteholder committee, I think
10 there was the view of waiting to see the examiner
11 report.

12 THE COURT: All right. Go ahead, Mr.
13 Levinson.

14 MR. LEVINSON: I have nothing further,
15 Your Honor. I'm going to pass the witness.

16 THE COURT: Very well. Cross?

17 MR. ZOTT: I think so, Your Honor.

18 Thank you.

19 CROSS-EXAMINATION

20 BY MR. ZOTT:

21 **Q Mr. Hilty, as I understand it, one of**
22 **your principal opinions is that a continued stay**
23 **will not enhance the prospect of a successful**
24 **resolution of the case, right?**

25 **A That's correct.**

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE:) No. 15 A 00149
)
CAESARS ENTERTAINMENT) Chicago, Illinois
OPERATING COMPANY, INC.,) August 25, 2016
) 9:30 a.m.
Debtors.) 2:00 p.m.

VOLUME III (Pages 1 - 276)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE A. BENJAMIN GOLDFAR

APPEARANCES:

For the Debtors: Mr. Jeffrey Zeiger;
Mr. David Zott;
Mr. Scott Lerner;

For WSFS: Mr. Sidney Levinson;
Mr. Bruce Bennett;
Mr. James Johnston;
Mr. Geoffrey Stewart;

For Trilogy: Mr. Frank Velocci;

For BOKF: Ms. Beth Brownstein;

Court Reporters: AMY M. SPEE, CSR, RPR, CRR
JERRI ESTELLE, CSR, RPR
United States Courthouse
219 South Dearborn Street
Room 661
Chicago, Illinois 60604

I N D E X

WITNESS:

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RONEN STAUBER

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1 So I agree with Your Honor that a part
2 of the goal of this injunction has always been,
3 and it remains, to reach a consensual deal,
4 absolutely. On the other hand, it cannot rise or
5 fall with whether we reach a consensual deal.
6 Because if it were to rise and fall with that,
7 then you would basically give one creditor group
8 the ability to deprive us of the injunction simply
9 by refusing to negotiate or to negotiate to a
10 deal. And that's --

11 THE COURT: I'm not disputing that I
12 have the power.

13 MR. ZOTT: Right.

14 THE COURT: I'm disputing that that's a
15 sensible exercise of it.

16 MR. ZOTT: That's fair.

17 THE COURT: If I were to have granted
18 the relief that you originally sought, which was
19 sought about two months after the case was filed,
20 and said an injunction right through not just the
21 confirmation hearing, mind you, but a decision on
22 confirmation, and who knows when that will be,
23 wouldn't that effectively be granting CEC the
24 benefit of the automatic stay? I mean, it's more
25 than just an injunction, isn't it? That's the

1 automatic stay, at least as to these claims,
2 because it runs right through --

3 MR. ZOTT: But, Judge, it has nothing
4 to do with CEC, nothing. What it has to do with
5 is the debtors' effort to reorganize. It's our
6 view that within CEC are estate assets that we
7 need to bring back in order to reorganize, and
8 they have agreed with us to return those
9 voluntarily to fund our plan. So it's about the
10 debtors and maximizing value for the debtors'
11 creditors. It's not about CEC.

12 THE COURT: Well, but it is. And I
13 don't see how you can say it isn't. I mean, it's
14 CEC that is the immediate beneficiary of the
15 injunction. The judgment will be against CEC.
16 Otherwise, CEC wouldn't care. And apparently it
17 does care somewhat.

18 MR. ZOTT: Your Honor, I understand
19 that, obviously, the third-party litigation
20 involves the guaranty claimants and CEC. But I
21 respectfully submit that the injunction will
22 benefit the debtors and all of the debtors'
23 creditors. And that is why all the creditors,
24 with the sole exception of the second lien group,
25 or part of the second lien group, support the

1 catastrophic for the creditors that support it.

2 We're close, but we're not there yet.
3 We ask that you grant a stay, obviously in your
4 discretion. We ask that it be through
5 confirmation, but we ask that we don't do anything
6 that destroys what we've done.

7 Thank you, again, for your time. I
8 very much appreciate it. I think I'm on the mark.

9 THE COURT: You actually had two
10 minutes, but I probably shouldn't tell you that.

11 Thank you very much, Mr. Zott.

12 MR. ZOTT: I have a few more comments.
13 No, I'm kidding, Your Honor. Thanks again. I'm
14 done. I told you I don't talk a lot.

15 Unless you have questions, Your Honor.

16 THE COURT: No, I'm fine. Thanks.

17 Okay. Mr. Zott suggested that there
18 might be conversations in the wake of this
19 hearing, and Mr. Bennett's folks, in their paper,
20 in their objection to the motion, asked me,
21 actually, not to rule until Monday.

22 Is that what people want? I mean, I've
23 seen Mr. Bennett and Mr. Sprayregen in here for 48
24 hours now, basically just eyeing each other across
25 the room, during which time they were not

1 apparently talking settlement, unless they're
2 telepathic. So if people are going to talk, I
3 won't rule until Monday. But if they're not going
4 to talk, then I'll rule tomorrow.

5 So what would you like me to do, or
6 would you like a minute to think about it?

7 MR. BENNETT: Why don't we have a
8 minute?

9 THE COURT: Sure. We'll take a short
10 recess.

11 (Brief recess.)

12 THE CLERK: Court is reconvened.
13 Please be seated and come to order.

14 MR. ZOTT: Your Honor, it's our
15 view that -- and we appreciate Your Honor's
16 inquiry. Two things. We think Your Honor should
17 rule as soon as possible, including tomorrow, if
18 we can get there tomorrow.

19 At the same time, we're absolutely
20 going to keep mediating, and we're going to -- as
21 soon as the mediator is available, we'll mediate.
22 And if that's tomorrow or whatever day that is,
23 we'll do it, but we think it would actually help
24 the process to have that ruling as soon as you can
25 do it.

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

<hr/>)
In re:		) Chapter 11
)
CAESARS ENTERTAINMENT OPERATING		) Case No. 15-01145 (ABG)
COMPANY, INC., et al., ¹)
)
Debtors.		) (Jointly Administered)
<hr/>)
CAESARS ENTERTAINMENT OPERATING		) Chapter 11
COMPANY, INC., <u>et al.</u> ,)
		) Adversary Case. No. 15-00149
<i>Plaintiffs</i>)
vs.)
)
BOKF, N.A., WILMINGTON SAVINGS FUND		) Hearing Date: June 3, 2015
SOCIETY, FSB, MEEHANCOMBS GLOBAL		) 10:30 a.m. (prevailing Central Time)
CREDIT OPPORTUNITIES MASTER FUND, LP,)
RELATIVE VALUE-LONG/SHORT DEBT)
PORTFOLIO, A SERIES OF UNDERLYING)
FUNDS TRUST, SB 4 CF LLC, CFIP ULTRA)
MASTER FUND, LTD., TRILOGY PORTFOLIO)
COMPANY, LLC, FREDERICK BARTON)
DANNER, AND CAESARS ENTERTAINMENT)
CORPORATION,)
)
<i>Defendants.</i>)

**DEBTORS' PRETRIAL BRIEF IN SUPPORT OF THEIR MOTION TO STAY, OR IN
THE ALTERNATIVE FOR INJUNCTIVE RELIEF ENJOINING PROSECUTION OF,
CERTAIN LITIGATION AGAINST CAESARS ENTERTAINMENT CORPORATION**

1. This is a textbook case for a temporary stay of the guaranty litigation. The continued prosecution of guaranty claims against CEC by certain CEOC creditors is directly at odds with the reorganization objectives of the Bankruptcy Code and will impair the Court's jurisdiction over the Debtors' reorganization by (i) threatening the Debtors' ability to recover

¹ A complete list of the Debtors and the last four digits of their federal tax identification numbers may be obtained at <https://cases.primeclerk.com/CEOC>.

estate property for the benefit of all creditors, and (ii) greatly diminishing the prospects of a successful reorganization. Apart from this, the guaranty litigation will deplete property of the estate because the Debtors share insurance with CEC that covers the litigation.²

2. The Debtors have substantial claims against CEC that represent one of the principal assets of their estates. Therefore, any reorganization of the Debtors will require a substantial contribution from CEC, either through a settlement or litigation. The Debtors are working towards a reorganization that maximizes value and creditor recoveries through substantial, near-term contributions from CEC. The value of these contributions would be distributed to all creditors in accordance with the statutory priority scheme under a plan in these chapter 11 cases. Instead of allowing this Court to oversee this process, certain of Debtors' creditors are pursuing competing judgments against CEC related to their CEOC debt. CEC, however, cannot pay large judgments in the guaranty litigation to certain of CEOC's creditors and also make substantial contributions to the Debtors' reorganization. CEC only has approximately \$257 million in distributable cash and its market capitalization is only \$1.4 billion. Under any reasonable valuation, the judgments sought against CEC in the existing guaranty litigation alone exceed CEC's value.

3. The Defendants here—indenture trustees and holders of CEOC's second lien and unsecured notes—seek to recover more than \$4.5 billion from CEC on account of guaranties that they say were improperly released. Both the Debtors' estate claims and the pending guaranty claims are against the same defendant, seek to recover from the same limited pool of assets, and arise from the same course of conduct that the Examiner, the Debtors and other parties are investigating in these proceedings. But this is not just about the \$4.5 billion in claims that

² Capitalized terms not defined herein are defined in the Debtors' Complaint [Adv. Proc. Dkt. 1] and Motion to Stay [Adv. Proc. Dkt. 4].

Defendants are currently pursuing against CEC. CEOC's first lien noteholders hold an additional \$6.3 billion in allegedly guaranteed debt. These senior lenders currently support the RSA and prefer a settlement in bankruptcy to litigating their guaranty claims. But if the Defendants' guaranty claims are not stayed, the first lien noteholders undoubtedly will join the fray to avoid having junior creditors jump ahead of their claims, resulting in more than \$10 billion in guaranty claims against CEC. As a result, litigation impacting one of the Debtors' principal assets (their claims against CEC) and two-thirds of their capital structure will be resolved outside of this bankruptcy proceeding.

4. Accordingly, the Debtors seek a temporary stay of the guaranty litigation until 60 days after the Examiner issues his final report. This represents a material shortening of the stay through confirmation that the Debtors originally sought. This temporary stay will give all parties time to digest the Examiner's report—including his evaluation of the guaranty litigation itself that Defendants seek to pursue—and, in light of its findings, attempt to reach a consensual or otherwise confirmable plan of reorganization. The Court can revisit the stay at that time based on the Examiner's conclusions and the reorganization's progress and prospects. Although temporary, the stay will provide the Debtors with a critically important window to pursue their efforts to reorganize and build consensus around a value-maximizing plan. The continued prosecution of the guaranty suits jeopardizes CEC's ability to make substantial contributions to the estate for the benefit of all creditors and threatens CEC's continued viability, which may lead to lower creditor recoveries. In contrast, a temporary stay will not harm Defendants as they will

be able to litigate issues related to their guaranty claims once the stay is lifted or at confirmation.³

ARGUMENT

5. This Court can enjoin proceedings in other courts upon a showing that (i) the proceedings will impair this Court's jurisdiction; (ii) the debtor has a reasonable likelihood of a successful reorganization; and (iii) an injunction is in the public interest. *Fisher v. Apostolou*, 155 F.3d 876, 882 (7th Cir. 1998) ("The jurisdiction of the bankruptcy court to stay actions in other courts extends beyond claims by and against the debtor, to include suits to which the debtor need not be a party but which may affect the amount of property in the bankrupt estate or the allocation of property among creditors."); *In re R&G Props.*, No. 09-37463, Feb. 3, 2010 Hr'g Tr. at 4 (Goldgar, J.) (for an injunction pursuant to section 105(a), a debtor "need only show that the proceedings to be enjoined would impair the court's jurisdiction and, of course, must show likelihood of success on the merits"); *see also In re Gander Partners LLC*, 432 B.R. 781, 788 (Bankr. N.D. Ill. 2010). The evidence at trial will show that these standards are met here.

I. THE GUARANTY LITIGATION THREATENS THE COURT'S JURISDICTION OVER THIS REORGANIZATION.

6. An action against a non-debtor impairs the court's jurisdiction where it "may affect the amount of property in the bankrupt estate," *Fisher*, 155 F.3d at 882, "frustrate the statutory scheme embodied in Chapter 11 or diminish a debtor's ability to formulate a plan of reorganization," *In re Gander Partners*, 432 B.R. at 788; *accord In re R&G Props.*, Feb. 3, 2010 Hr'g Tr. at 4 (enjoining lawsuit that would impair the court's jurisdiction by "interfer[ing] with

³ Defendant WSFS originally was pursuing fraudulent transfer and other claims against CEC and fiduciary claims against the Debtors' directors. WSFS has since agreed that those claims are stayed, and it is only seeking to prosecute its guaranty claims against CEC. WSFS Obj., Adv. Proc. Dkt. 22, ¶ 25 ("WSFS is not challenging the Debtors' position that section 362 operates to stay the Non-Independent Claims."). Thus, the sole remaining issue before the Court is whether the Defendants should be allowed to continue their guaranty claims against CEC.

accomplishing [a] reorganization”); *In re Kmart Corp.*, 285 B.R. 679, 688 (Bankr. N.D. Ill. 2002) (stay is appropriate to enjoin proceedings that would “divert[] resources need[ed] for [the debtor’s] reorganization”). The continued prosecution of the guaranty litigation will impair this Court’s jurisdiction in at least three ways.

A. The Guaranty Litigation Threatens the Debtors’ Ability to Recover Estate Property.

7. First, the continuation of the guaranty litigation threatens the Debtors’ ability to recover estate property. *See In re Gander Partners*, 432 B.R. at 778 (section 105 injunction appropriate where the actions sought to be enjoined “would interfere with, deplete or adversely affect property of a debtor’s estate”); *Fisher*, 155 F.3d at 882 (jurisdiction to stay proceedings extends to actions that “may affect the amount of property in the bankrupt estate”).

8. The Debtors have valuable claims against CEC to recover wrongfully transferred estate property and these claims belong exclusively to the Debtors. They negotiated an RSA that requires CEC to contribute at least \$1.5 billion to the estate to settle those claims, and the amount of CEC’s contribution is likely to increase as the Debtors continue to negotiate with additional creditor groups. The Defendants, however, seek more than \$4.5 billion from the same entity (CEC), from the same pool of assets, and based on the same alleged “scheme” or course of conduct. *See, e.g.*, Debtors Ex. 2 (*MeehanCombs* Am. Compl.) ¶ 85 (“In sum, the foregoing course of conduct, including the Agreement at issue in this Complaint, constituted an aggregate plan or scheme by CEC and CEOC to restructure CEOC’s \$19.8 billion debt out of court to stack the deck against certain creditors, such as Plaintiffs and the Disenfranchised Noteholders, in advance of CEOC’s recently-filed bankruptcy that will favor CEC and other stakeholders and insiders and allow CEC to evade its irrevocable guarantee of the Notes.”); *see also id.* ¶¶ 14, 62, 117; Debtors Ex. 4 (*BOKF, N.A.* Compl.) ¶ 70 (“After removing CEOC’s most valuable assets

and saddling it with debt and other liabilities, CEC concocted its final strategic maneuvers to preserve the value it created in ‘Good Caesars’ and ensure that creditors of CEOC or ‘Bad Caesars’ had no chance of recovery on the Parent Guarantee”); *see also id.* ¶ 3; Debtors Ex. 3 (*Frederick Barton Danner* Compl.) ¶ 12 (“Lastly, the [guaranty] Amendments are part of Caesars’ larger plan to move CEOC’s most valuable assets beyond the reach of creditors, thus enriching CEC, its shareholders and its affiliates at the expense of CEOC’s creditors, including the Non-Preferred Legacy Noteholders.”); *see also id.* ¶ 50; Debtors’ Ex. 1 (*WSFS* Compl.) ¶ 1 (“This action arises from a series of self-dealing transactions ... The purpose and effect of the transfers was to enrich CEC and its affiliates and shareholders at the expense of CEOC and to move CEOC’s assets beyond the reach of CEOC’s creditors.”).

9. CEC, however, has limited assets. It has only approximately \$257 million in unrestricted cash and a \$1.4 billion market capitalization. *See* Debtors Ex. 28 (Mar. 31, 2015 Cash Balances); *see also* Debtors Ex. 34 (CEC 10-Q, May 11, 2015) at 9. Under any reasonable valuation, CEC simply does not have the financial wherewithal to make a substantial contribution to the Debtors’ estates, either through the RSA, another plan, or litigation, and also satisfy multi-billion dollar guaranty claims. And, every dollar the Defendants recover through their guaranty lawsuits against CEC is a dollar less that CEC has to satisfy the Debtors’ claims and otherwise contribute to the Debtors’ reorganization for the benefit of all creditors.

B. The Guaranty Litigation Will Diminish the Debtors' Ability to Formulate a Plan of Reorganization.

10. Second, the continued prosecution of the guaranty lawsuits will “diminish [the] debtor[s’] ability to formulate a plan of reorganization.” *In re Gander Partners*, 432 B.R. at 788; accord *In re R&G Props.*, Feb. 3, 2010 Hr’g Tr. at 4 (enjoining lawsuit where it would impair the court’s jurisdiction by “interfer[ing] with accomplishing [a] reorganization”).

11. A lynchpin of any reorganization will be the Debtors’ ability to secure substantial contributions from CEC, either voluntarily or through litigation. The guaranty litigation, however, poses a substantial obstacle on the path to a consensual plan as it threatens CEC’s ability and incentive to make *any* contribution to the Debtors’ estate, much less the \$1.5 billion contribution called for by the RSA. Indeed, CEC has publicly announced that an adverse result in the guaranty litigation would “raise substantial doubt” about CEC’s “ability to continue as a going concern.” Debtors Ex. 34 (CEC 10-Q, May 11, 2015) at 8. The Debtors believe that CEC likely will file for bankruptcy if judgment is entered against CEC in the guaranty litigation. This will further diminish the Debtors’ ability to reorganize by, among other things, eliminating two of the key elements of the Debtors’ value-maximizing restructuring strategy: a substantial and immediate contribution by CEC to settle litigation claims and credit support from CEC for a REIT structure. Although these cases are already heavily litigious, a CEC bankruptcy will usher in a new level of extended, value-destructive litigation to the detriment of CEC and its creditors, including litigation over the proper venue for a CEC bankruptcy, whether the CEC and the Debtors’ cases should be separately administered, whether the automatic stay in a CEC case would impair the Debtors’ ability to collect on their claims, and so on.... Continuation of the guaranty litigation likewise threatens CEC’s intended merger with CAC through which CEC will gain access to the resources required to make its contribution under the RSA. Simply put, the

continued prosecution of the guaranty claims at this juncture will have very real and direct financial, business and litigation consequences for Debtors and their creditors.

12. Courts in this district have entered injunctions where the continued prosecution of actions against a non-debtor threatened a source of funding for the debtor's reorganization. For example, in *R&G Properties*, this Court enjoined two state court actions from proceeding against the debtor's partners where the partners' "ability to contribute time and money, particularly money, [would] be jeopardized if the state actions proceed[ed]" and where the partners contemplated bankruptcy absent a stay. Feb. 3, 2010 Hr'g Tr. at 9–10. Likewise, in *Gander*, the court enjoined actions against the debtor's guarantors where the actions threatened the guarantors' ability to contribute funds to the reorganization: "If the lawsuits proceed their outcome could impair this court's jurisdiction to help the Debtors to reorganize as the source of funds to assist the reorganization would no longer be available." 432 B.R. at 788; *see also Fisher*, 155 F.3d at 879-883 (enjoining creditors' securities claims against non-debtors to prevent "a race to the courthouse" in pursuit of "the same limited pool of money, in the possession of the same defendants").⁴

⁴ In *In re Teknek*, the Seventh Circuit affirmed its ruling in *Fisher* that a bankruptcy court is empowered to stay claims against nondebtors that "may affect the amount of property in the bankrupt estate, or the allocation of property among creditors." 563 F.3d 639, 648–49 (7th Cir. 2009) (citations omitted). The court affirmed the district court's denial of an injunction in that case, however, because the creditor at issue had secured a judgment "against both the debtor *and an independent non-debtor*, Electronics. It is Electronics' joint and several liability that makes [the judgment creditor's] claim special." *Id.* at 644 (emphasis in original). The underlying defendants had "looted both [the debtor] and [the non-debtor] Electronics. Those are separate acts, which caused separate injuries to two separate companies, only one of which is in bankruptcy." *Id.* at 649. The court reasoned that the creditor's claims were therefore not sufficiently related to the bankruptcy proceedings to warrant an injunction. *Id.* at 649-650. The court also deemed "relevant" that the judgment creditor was "the debtor's only major creditor" so allowing its case to proceed "will have no effect on a larger class of creditors" or "'derail the bankruptcy proceedings.'" *Id.* at 650 (quoting *Fisher*, 155 F.3d at 883). Here, like *Fisher* and unlike *Teknek*, the Defendants' guarantee claims arise from their creditor relationship with the

13. Not only do the guaranty claims jeopardize CEC's *ability* to contribute to the Debtors' reorganization, they also remove the *incentive* for CEC and the Debtors' other constituents to engage in plan negotiations while the litigations proceed. CEC has agreed to make substantial contributions to the Debtors in settlement of all claims against it, including the guaranty claims. CEC has little incentive to continue pursuing negotiations with the Debtors' creditors, or to make a substantial contribution to the restructuring, if it must simultaneously litigate the guaranty claims—and face the prospect of additional multi-billion dollar judgments—in other courts. The continued prosecution of the guaranty claims would therefore undercut CEC's proposed settlement and remove its incentive to work out a coordinated resolution of claims for the benefit of all creditors.

14. The guaranty litigation similarly risks diverting the efforts of other creditors away from negotiating a consensual reorganization. As of now, CEOC's first lien noteholders have agreed to settle their guaranty claims against CEC as part of the RSA. Indeed, as part of that agreement, the first lien noteholders have accepted a proposed restructuring that makes them less than whole in an effort to provide additional value to junior creditors to reach a consensual deal. But if the guaranty claims proceed, the first lien noteholders will likely decide to litigate their guaranty claims against CEC outside of the bankruptcy in order to prevent junior creditors from jumping ahead of their claims. The first lien bank lenders, which have been in stop and start negotiations over the RSA, likewise would have no incentive to continue negotiating once CEC and the first lien noteholders withdraw from the RSA negotiations in favor of litigation. In short, all eyes would turn to the guaranty litigation, which may take years to resolve as it involves a

Debtors, they allege a single scheme to loot the Debtor of assets and thereby thwart creditor recoveries, and the prosecution of their lawsuits outside of bankruptcy will adversely affect other creditors and threaten to derail the bankruptcy proceedings.

novel and controversial theory of liability under the Trust Indenture Act that is the subject of vigorous dispute among the parties, has never been considered by a federal circuit court and likely will lead to lengthy appeals. This reorganization would come to a grinding, value-destructive halt. This is true even if only one of the guaranty cases is allowed to go forward (as at least one Defendant apparently intends to argue). Given the overlapping legal and factual issues among the guaranty actions, permitting even one suit to proceed will remove creditors' incentive to pursue a restructuring in this Court, and impair this Court's jurisdiction, as issues central to their recoveries are being decided elsewhere.

C. Absent a Stay, Litigation Directly Impacting the Debtors' Principal Asset and Involving the Majority of Their Capital Structure Will Be Transferred to Another Court.

15. The Debtors' claims against CEC are one of the principal assets of their estates. Currently, the Defendants assert more than \$4.5 billion in claims against the same pool of money that the Debtors' seek to recover, either through settlement or litigation. And, as noted, that is only the beginning of the guaranty claims. Absent a stay, the first lien noteholders will likely join the fray. Allowing the Defendants to continue pursuing their guaranty claims against CEC outside of this bankruptcy will thus trigger a race to the courthouse and unravel the Debtors' efforts to recover on these claims for the benefit of all creditors. *See, e.g. Fisher*, 155 F.3d at 883 (enjoining actions under section 105 where "allowing the creditors to convert the bankruptcy proceeding into a race to the courthouse would derail the bankruptcy proceedings"). The net result will be that litigation directly impacting one of the Debtors' largest assets and involving the majority of its capital structure will be transferred to another court. It is difficult to imagine a more direct threat to this Court's jurisdiction over this reorganization or the Debtors' efforts to reorganize.

II. THE GUARANTY LITIGATION WILL DEplete THE ESTATES' PROPERTY INTEREST IN SHARED INSURANCE WITH CEC.

16. Separately, the guaranty litigation also will deplete the proceeds of insurance policies that are property of the Debtors' estates. *See* 11 U.S.C. §§ 541(a)(1), 541(a)(6); *Home Ins. Co. v. Cooper & Cooper, Ltd.*, 889 F.2d 746, 748 (7th Cir. 1989) (noting that a "policy of insurance is an asset of the estate"); *In re Gladwell*, 2009 WL 140098, at *2 (Bankr. C.D. Ill. 2009) ("Insurance policies and debtor's rights under insurance policies have generally been held to constitute property of the bankruptcy estate."); *In re Allied Prods. Corp.*, 288 B.R. 533, 535-36 (Bankr. N.D. Ill. 2003) ("insurance policies are property of its estate in bankruptcy, under the broad definition of § 541(a) of the Bankruptcy Code"). Where a debtor and non-debtor have "a shared interest in any proceeds" of a policy, the proceeds are property of the estate. *See In re Feher*, 202 B.R. 966, 970 (Bankr. S.D. Ill. 1996) ("In view of the fact that [the debtor] has a shared interest in any proceeds paid under the policy, the proceeds constitute property of [the debtor]'s bankruptcy estate."); *In re Forty-Eight Insulations, Inc.*, 54 B.R. 905, 908 (Bankr. N.D. Ill. 1985) ("insurance policies and proceeds are property of the estate").

17. CEC and CEOC share a common Management Liability Insurance Policy ("Policy") that provides coverage to CEC for the guaranty claims, as well as coverage to CEOC, its subsidiaries and its directors. *See* Debtors Ex. 65 (AIG Insurance Policy) at 20, 22 (defining "Insured" to include "Organization," which in turn includes "each Subsidiary" of CEC, and "Executive," which includes directors of CEC and its subsidiaries). The insurance structure provides \$155 million in coverage for CEC and its subsidiaries, including CEOC. *See* Debtors Ex. 66 (Chart of Insurance Tower). AIG, the primary carrier, has acknowledged that the *Danner* and *MeehanCombs* actions are covered by the Policy, and has reserved its rights with respect to the *WSFS* action. *See* Debtors Ex. 71 (Oct. 17, 2014 AIG Letter); Debtors Ex. 72 (Oct. 31, 2014

AIG Letter). The excess carriers have taken the same position as AIG. *See, e.g.*, Debtors Ex. 73 (Nov. 1, 2014 HCC Global Letter); Debtors Ex. 74 (Nov. 7, 2014 Axis Letter); Debtors Ex. 75 (Dec. 3, 2014 RSUI Group, Inc. Letter); Debtors Ex. 76 (Dec. 4, 2014 Endurance Letter); Debtors Ex. 77 (Dec. 29, 2014 Aspen Letter).

18. Allowing the guaranty litigation to proceed against CEC will reduce the proceeds available to the Debtors. The shared insurance covers defense costs in addition to settlements and judgments. *See* Debtors Ex. 65 (AIG Insurance Policy) at 9. The proceeds are paid on a first-billed, first-paid basis, such that payments on behalf of CEC will reduce the proceeds available to the Debtors, thereby depleting an asset of the Debtors' estates. *See In re IFC Credit Corp.*, 422 B.R. 659, 663 (Bankr. N.D. Ill. 2010) (staying litigation against non-debtors pursuant to section 105(a) because of risk to debtors' insurance policy proceeds); *In re A.H. Robins Co., Inc.*, 788 F.2d 994, 1001–02 (4th Cir. 1986) (proceedings against non-debtors “who qualify as additional insureds under the [insurance] policy are to be stayed under section 362(a)(3)"); *In re marchFIRST, Inc.*, 288 B.R. 526, 532–33 (Bankr. N.D. Ill. 2002) (staying shareholder litigation against non-debtors pursuant to section 105(a) because of risk of depleting insurance proceeds available to debtor), *aff'd sub nom. Megliola v. Maxwell*, 293 B.R. 443, 449–50 (N.D. Ill. 2003). Accordingly, the depletion of the Debtors' shared insurance through continuation of the guaranty litigation provides an independent basis for a temporary stay. 11 U.S. C. § 362(a)(3).

III. THE DEBTORS HAVE A REASONABLE LIKELIHOOD OF REORGANIZING SUCCESSFULLY.

19. “Likelihood of success on the merits, courts have said repeatedly, means reasonable likelihood of a successful reorganization.” *In re R&G Props.*, Feb. 3, 2010 Hr'g Tr. at 4; *accord In re Gander Partners*, 432 B.R. at 788. “[L]ess evidence is necessary” where the

bankruptcy case is in its early stages, “and doubts ... are to be resolved in favor of the debtor.”

In re R&G Props., Feb. 3, 2010 Hr’g Tr. at 6.

20. There is no question the Debtors have a reasonable (indeed a high) likelihood of successful reorganization—at least if the guaranty litigation is stayed. The Debtors operate a strong and growing business. The Debtors have a national footprint of quality casinos, anchored by the iconic Caesars Palace in Las Vegas, a famous brand name and a proprietary customer rewards system that is the envy of the industry—all points the Defendants’ concede. *See, e.g.*, G. Lyon Dep. at 114:14-115:4. The Debtors have generated nearly \$1 billion of EBITDA historically, and their first quarter performance demonstrates they are on track to meet this target again this year. *See* Debtors Ex. 23 (Feb. 28, 2015 CEOC Long Term Financial Projections) at 1; Debtors Ex. 29 (April 13, 2015 Presentation to UCC and 2L Committee - Business Plan) at 7; Debtors Ex. 21 (CEOC February Monthly Creditor Advisory Reporting Package) at 4; Debtors Ex. 25 (CEOC March Monthly Creditor Advisory Reporting Package) at 4. The strength of the Debtors’ business alone makes it likely they will reorganize successfully.

21. The Debtors are also likely to reorganize successfully given the nature of their restructuring. The Debtors’ restructuring is principally focused on right-sizing their debt to a level they can adequately service, and converting to a REIT structure to maximize distributable value to creditors. Indeed, the Debtors generate positive cash flow on an unlevered basis and have significant real property holdings that make a REIT structure attractive. The Debtors’ current plan seeks to reduce their debt by \$10 billion to a level that the Debtors can support as a REIT structure. *See generally* Joint Defs. Ex. 73 (Debtors’ Joint Plan of Reorganization). Apart from its sound business, “the Debtors have so far been successful in doing everything they’ve needed to do to date.” *In re Lyondell Chem. Co.*, 402 B.R. 571, 590 (Bankr. S.D.N.Y. 2009). So

far, the Debtors, among other things, have reached agreement with the majority of CEOC's first lien noteholders and CEC on the economic terms of a restructuring as set forth in the RSA; established venue in the Northern District of Illinois; obtained first-day relief that was essential to the Debtors' operations; negotiated for the long-term use of cash collateral; moved for the appointment of an examiner who has commenced his investigation into certain prepetition transactions; announced a market test; and obtained a six-month extension of exclusivity.

22. In short, "the Debtors are proceeding on track, and there is no reason to believe or suspect that that their reorganization will fail—unless, of course, the actions sought to be enjoined *cause* it to fail." *In re Lyondell*, 402 B.R. at 590.

IV. THE PUBLIC INTEREST STRONGLY FAVORS A TEMPORARY INJUNCTION.

23. "Promoting a successful reorganization is one of the most important public interests." *In re Gander Partners*, 432 B.R. at 788 (quoting *In re Integrated Health Services, Inc.*, 281 B.R. 231, 239 (Bankr. D. Del. 1992)). Public policy also strongly favors the consensual resolution of disputes. *Air Line Stewards & Stewardesses Ass'n, Local 550 v. Trans World Airlines, Inc.*, 630 F.2d 1164, 1166 (7th Cir. 1980) ("Federal courts look with great favor upon the voluntary resolution of litigation through settlement."); *In re Beltran*, 2010 WL 3338533, at *3 (Bankr. N.D. Ill. Aug. 25, 2010) ("Consensual resolution of litigation has been favored in the law from time immemorial.").

24. Temporarily staying the guaranty claims will preserve assets necessary to fund the Debtors' reorganization, and provide a breathing spell for the Debtors to pursue a consensual plan that will maximize recovery for all parties.

25. Conversely, the Defendants will suffer no harm from a temporary stay of their claims until the Examiner issues his report. If the Debtors are able to achieve a consensual

restructuring that maximizes recovery for all parties, the Defendants will directly benefit. If the Debtors achieve a confirmable plan centered around a substantial contribution from CEC and the Court approves a release of the Defendants' guaranty claims in that context, judicial economy will also be served as multiple courts will not expend resources adjudicating these issues in the interim. The alternative—a likely CEC bankruptcy if found liable on the guaranty claims with the prospect for endless litigation—will be highly value destructive and likely will lead to lower recoveries for the Defendants and other creditors. And if the Debtors cannot achieve substantial progress towards a consensual restructuring during the stay period, the Court can revisit the stay in light of the Examiner's report and the reorganization's prospects and progress.

CONCLUSION

26. The evidence at trial will confirm that a stay of the guaranty litigation is necessary to avoid derailing the Debtors' reorganization efforts. The Debtors respectfully request that the Court grant the Debtors' motion to stay the guaranty litigation against CEC.

Dated: May 29, 2015
Chicago, Illinois

/s/ David J. Zott, P.C.

James H.M. Sprayregen, P.C.

David R. Seligman, P.C.

David J. Zott, P.C.

Jeffrey J. Zeiger, P.C.

KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS INTERNATIONAL LLP

300 North LaSalle

Chicago, Illinois 60654

Telephone: (312) 862-2000

Facsimile: (312) 862-2200

- and -

Paul M. Basta, P.C. (admitted *pro hac vice*)

Nicole L. Greenblatt (admitted *pro hac vice*)

KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS INTERNATIONAL LLP

601 Lexington Avenue

New York, New York 10022-4611

Telephone: (212) 446-4800

Facsimile: (212) 446-4900

Counsel to the Debtors

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:)	
	)	Chapter 11
)	
CAESARS ENTERTAINMENT OPERATING	)	Case No. 15-01145 (ABG)
COMPANY, INC., <i>et al.</i> , ¹)	
)	
Debtors.	)	(Jointly Administered)
)	
<hr/>		
CAESARS ENTERTAINMENT OPERATING	)	Chapter 11
COMPANY, INC., <i>et al.</i> ,)	
	)	Adversary Case No. 15-00149
<i>Plaintiffs</i>)	
vs.)	
)	
BOKF, N.A., WILMINGTON SAVINGS FUND	)	Hearing Date: July 22, 2015
SOCIETY, FSB, MEEHANCOMBS GLOBAL	)	1:30 p.m. (prevailing Central Time)
CREDIT OPPORTUNITIES MASTER FUND, LP,)	
RELATIVE VALUE-LONG/SHORT DEBT)	
PORTFOLIO, A SERIES OF UNDERLYING)	
FUNDS TRUST, SB 4 CF LLC, CFIP ULTRA)	
MASTER FUND, LTD., TRILOGY PORTFOLIO)	
COMPANY, LLC, and FREDERICK BARTON)	
DANNER,)	
)	
)	
<i>Defendants.</i>)	

**DEBTORS' POST TRIAL BRIEF IN SUPPORT OF THEIR MOTION TO STAY, OR IN
THE ALTERNATIVE FOR INJUNCTIVE RELIEF ENJOINING PROSECUTION OF,
CERTAIN LITIGATION AGAINST CAESARS ENTERTAINMENT CORPORATION**

¹ A complete list of the Debtors and the last four digits of their federal tax identification numbers may be obtained at <https://cases.primeclerk.com/CEOC>.

1. This is a pivotal moment in this chapter 11 case. The Debtors have developed a framework for a plan of reorganization that is premised on substantial contributions by CEC, both directly and in the form of credit support for a value-maximizing REIT structure and securities that will be distributed to creditors under a plan. The Debtors' first lien noteholders support this framework and negotiations continue with other stakeholders to build further consensus. There is also no dispute that *any* reorganization of these Debtors will require a substantial financial contribution from CEC, either voluntarily or through litigation, because estate causes of action against CEC are one of the estate's primary assets. Certain CEOC creditors, however, are now seeking judgments against CEC in lawsuits outside of this bankruptcy case to recover \$11 billion in alleged guaranty claims, including a lawsuit that the first lien indenture trustee filed after trial seeking more than \$6 billion. One indenture trustee already has filed an expedited motion for summary judgment and another is expected later today. Thus, the first of these judgments could be entered by August and will likely result in CEC filing for chapter 11—if it even waits that long—regardless of whether the judgment is a declaration of liability or a damages award as CEC lacks the wherewithal to bond an appeal. Dueling CEC and CEOC bankruptcies will destroy significant value, impair if not eliminate the Debtors' ability to secure substantial contributions from CEC, interfere with the Debtors' duty to marshal estate assets for the benefit of all of its creditors, and imperil Debtors' reorganization efforts.

2. This Court has the jurisdiction and authority to temporarily enjoin the guaranty litigation from proceeding because it will “affect the amount of property in the bankrupt estate or the allocation of property among creditors.” *Fisher v. Apostolou*, 155 F.3d 876, 882 (7th Cir. 1998). The evidence at trial was largely undisputed and proved that the Debtors' request falls squarely within *Fisher*. As in *Fisher*, Defendants' claims arise from their relationship with

Debtor CEOC (the primary obligor on their notes) and Defendants stand in exactly the same position as creditors holding \$11 billion in claims under CEOC-issued (and CEC guaranteed) indentures with very similar (and in some cases identical) guaranty language. The guaranty claims seek recourse against the same entity (CEC), for the same limited pool of assets and, according to Defendants themselves, arise from the same “aggregate plan or scheme” as the Debtors’ estate claims. Accordingly, as in *Fisher*, the Debtors must have a chance to maximize value for all creditors; Defendants cannot cut to the front of the line and end run this Court’s jurisdiction over this case.

3. *Teknek* does not compel a different result. 563 F.3d 639 (7th Cir. 2009). *Teknek* affirmed the guiding principles of *Fisher* but held that the claims sought to be enjoined were not sufficiently “related to” the debtor’s bankruptcy. Unlike here, in *Teknek*, the debtor’s only creditor sought to enforce a patent infringement judgment against non-debtor affiliates on a claim that was entirely independent of the debtor, not shared with other creditors, and did not implicate the Bankruptcy Court’s power over estate property or creditor distributions.

4. To conclude that the Court’s “related to” jurisdiction does not extend far enough to warrant an injunction under the facts and circumstances present here would eliminate section 105 from the Bankruptcy Code. The guaranty litigation threatens the substantial progress that the Debtors have made towards a consensual restructuring, including the RSA, their ongoing negotiations with other parties in interest, the Examiner investigation and Debtors’ market test process. As set forth below, there is little to lose and nearly everything to gain by staying the guaranty litigation until 60 days after the Examiner issues his final report.

10 (Lyon). The Debtors' principal problem is a highly-levered balance sheet—a problem that chapter 11 is well suited to solve. *Id.* at 322:14–19; June 3 Tr. 60:12–61:19 (Millstein).

52. Moreover, Debtors “have so far been successful in doing everything they’ve needed to do to date.” *See In re Lyondell*, 402 B.R. at 590. Among other things, the Debtors have reached agreement with a large majority of CEOC’s first lien noteholders and CEC on the economic terms of a restructuring as set forth in the RSA, obtained essential first-day relief, negotiated for the long-term use of cash collateral, moved for the appointment of an examiner who has commenced his investigation, announced a market test, and obtained a six-month extension of exclusivity. June 3 Tr. 48:6–9, 63:1–12, 98:19–25 (Millstein); PX 84; Dkt. Nos. 988, 992, 1690. The Debtors’ progress shows they are on the path to a successful reorganization if the guaranty suits are stayed. There was no evidence to the contrary.

VI. THE PUBLIC INTEREST AND BALANCE OF HARMS STRONGLY FAVORS A TEMPORARY INJUNCTION.

53. “Promoting a successful reorganization is one of the most important public interests.” *Gander Partners*, 432 B.R. at 789. Public policy also strongly favors the consensual resolution of disputes. *Air Line Stewards & Stewardesses Ass’n, Local 550 v. Trans World Airlines, Inc.*, 630 F.2d 1164, 1166 (7th Cir. 1980) (“Federal courts look with great favor upon the voluntary resolution of litigation through settlement.”); *In re Beltran*, 2010 WL 3338533, at *3 (Bankr. N.D. Ill. Aug. 25, 2010) (“Consensual resolution of litigation has been favored in the law from time immemorial.”).

54. A temporary injunction would provide a critical window for the Debtors and other parties in interest to try to reach a consensual, value-maximizing plan that contains significant funding contributions and credit support from CEC. To accomplish this, the Debtors need to ensure that the entity from which they seek to extract these contributions (CEC) has the

resources and value to fund them. A temporary stay will funnel to the reorganization all of the claims that relate to the estate, providing the parties with a strong incentive to reach a consensual resolution in the chapter 11 case. June 3 Tr. 72:15–73:8 (Millstein). By avoiding a value-destructive race to the courthouse, a temporary stay will preserve the currency that will fund a plan. And extending that stay until 60 days after the Examiner issues his final report will allow the parties to attempt to complete those negotiations armed with important and objective reference points about both the estates’ and the guaranty claims to the same assets.

55. Defendants will suffer no harm from a temporary stay. The threat of their guaranty claims will provide them with powerful leverage to negotiate a favorable consensual deal. If they can achieve a deal, they are better off. If not, the stay will lapse 60 days after the Examiner issues his report, and they will be no worse off. June 3 Tr. 103:6–105:2 (Millstein).

56. If Defendants instead are permitted to proceed to judgment, they will precipitate the very race to the courthouse that *Fisher* abhors. And everyone—including the guaranty claimants—likely will be worse off. Put simply, the guaranty claimants will never collect outside of bankruptcy on their guaranties by litigating with CEC. Instead, they will succeed only in bankrupting CEC.

CONCLUSION

Debtors fervently hope that the parties will avoid the litigation meltdown scenario, and value can be preserved and used to achieve a consensual plan. Through this motion, they ask only for a chance—a chance that could benefit everyone, and will hurt no one. Based on the largely undisputed record, the Debtors respectfully request that the Court grant the Debtors’ motion to stay the guaranty litigation until 60 days after the Examiner issues his report.

No. 1:15-cv-06504

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE: CAESARS ENTERTAINMENT OPERATING COMPANY, INC., ET AL.,
Debtors.

CAESARS ENTERTAINMENT OPERATING COMPANY, INC., ET AL.,
Plaintiffs-Appellants,

v.

BOKF, N.A., WILMINGTON SAVINGS FUND SOCIETY, FSB, MEEHANCOMBS
GLOBAL CREDIT OPPORTUNITIES MASTER FUND, LP, RELATIVE VALUE-
LONG/SHORT DEBT PORTFOLIO, A SERIES OF UNDERLYING FUNDS TRUST,
SB 4 CF LLC, CFIP ULTRA MASTER FUND, LTD., TRILOGY PORTFOLIO
COMPANY, LLC, AND FREDRICK BARTON DANNER,
Defendants-Appellees.

On Appeal from the United States Bankruptcy Court for the
Northern District of Illinois (Goldgar, J.)
Chapter 11 Case No. 15-01145
Adversary Proceeding No. 15-00149

OPENING BRIEF OF PLAINTIFFS-APPELLANTS

John C. O'Quinn
KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS
INTERNATIONAL LLP
655 15th Street, N.W.
Washington, D.C. 20005
Tel: (202) 879-5000
Fax: (202) 879-5200

Paul M. Basta, P.C.
Nicole L. Greenblatt
KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS
INTERNATIONAL LLP
601 Lexington Avenue
New York, N.Y. 10022
Tel: (212) 446-4800
Fax: (212) 446-4900

James H.M. Sprayregen, P.C.
David R. Seligman, P.C.
David J. Zott, P.C.
Jeffrey J. Zeiger, P.C.
KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS
INTERNATIONAL LLP
300 North LaSalle
Chicago, Illinois 60654
Tel: (312) 862-2000
Fax: (312) 862-2200

Counsel for Debtors/Plaintiffs-Appellants

INTRODUCTION

This is a pivotal moment in the Debtors' reorganization efforts. Any successful reorganization of the Debtors will require a substantial financial contribution from their non-debtor parent, Caesars Entertainment Company ("CEC"), either voluntarily or through litigation, because estate causes of action against CEC are one of the bankruptcy estate's two primary assets. And the Debtors have an agreement with CEC and certain of the Debtors' significant creditors that calls for CEC to provide substantial contributions and credit support worth at least \$1.5 billion to the Debtors' restructuring. However, certain creditors are attempting to jump to the front of the line by litigating to judgment—in other courts—claims to revive previously released guarantees for *multiple billions of dollars* against CEC. If any of those actions move forward and is successful, CEC will be unable to contribute anything meaningful to the Debtors' reorganization for proper distribution to *all* of the Debtors' creditors in accordance with the absolute priority rule, thus imperiling their proposed chapter 11 plan.

This should not be happening. Courts have broad authority under 11 U.S.C. § 105(a) to issue “*any* order ... that is necessary or appropriate” to protect their jurisdiction and carry out the provisions of Title 11. (Emphasis added). It is well-settled that a bankruptcy court may temporarily enjoin actions against non-debtor third parties (like CEC) that will affect the integrity or the administration of the bankruptcy estate. That is what the Debtors sought here.

Although acknowledging that the actions against CEC would have been stayed in most other courts, the bankruptcy court refused to enter an injunction here based solely on the view that the Seventh Circuit—uniquely among all other circuit courts—has restricted § 105(a) relief to situations where the debtor has a claim against the non-debtor defendant that arises from the “same acts” as those underlying the non-bankruptcy litigation sought to be enjoined. Compounding its error, it also held this “same acts” requirement can only be satisfied when the debtor and third-party causes of action require identical proof.

Respectfully, that is not the law. To the contrary, it is well established in the Seventh Circuit and elsewhere that a bankruptcy court has authority to enjoin any third-party actions that threaten the

bankruptcy estate, and courts are left to apply that *flexible* standard on a case-by-case basis. Numerous courts both within and outside this district, as the bankruptcy court itself acknowledged, often have used that authority to enjoin third-party actions in nearly identical circumstances.

But even if there were some “same acts” requirement, the Debtors would still satisfy it. At most, that would require that the claims of the debtor and the third-party plaintiff arise from overlapping and closely related acts of alleged misconduct by the non-debtor defendant inflicted against or involving the debtor. That is precisely the case here, where the claims of both the Debtors and the creditors arise from the same capital markets transactions involving the Debtors and their debt. The bankruptcy court concluded otherwise only by erroneously holding—as a matter of law—that the facts in *Fisher v. Apostolou*, 155 F.3d 876 (7th Cir. 1998), define the outer limits of a court’s § 105(a) authority. Yet *Fisher* says exactly the opposite.

The Debtors are entitled to a temporary injunction as a matter of law, and it is time for Appellees’ race to judgment to come to an end. The bankruptcy court unquestionably had authority to enjoin Appellees’

actions: those actions affect the amount of property in the bankruptcy estate, the allocation of property among creditors, and the Debtors' ability to formulate a viable reorganization plan. The other requirements for a § 105 injunction are also satisfied beyond reasonable dispute. Indeed, it is undisputed that, with a contribution from CEC, the Debtors have a reasonable likelihood of a successful reorganization, and that the public interest strongly favors moving forward with a reorganization that will benefit over 32,000 employees and several dozen communities. This Court should reverse and remand with instructions to immediately enter the injunction requested by the Debtors.

STATEMENT OF JURISDICTION

The United States Bankruptcy Court for the Northern District of Illinois (Goldgar, J.) had jurisdiction over this core adversary proceeding "concerning the administration of the estate" under 28 U.S.C. §§ 157(b)(2)(A) and 1334(a). The bankruptcy court entered a final order denying all requested relief on July 22, 2015. A62-63. The Debtors timely filed their notice of appeal on July 24, 2015. A1098; *see also* Fed. R. Bankr. P. 8002(a)(1). This Court has jurisdiction to hear

after capital expenditures. A1030:12–1031:19; *see also* A1002-03. The Debtors’ primary problem is over-leverage, but that is a problem chapter 11 reorganization is well suited to address. A1030:12–1031:19; A1096:14-19. Indeed, there is no evidence or argument that the Debtors are unlikely to reorganize successfully, assuming a significant contribution from CEC. *See In re Lyondell*, 402 B.R. at 590 (finding likelihood of successful reorganization where debtors “have so far been successful in doing everything they’ve needed to do to date”).

3. The Public Interest Favors Issuing The Requested Injunction

The temporary injunction that the Debtors seek here is in the public interest. “Promoting a successful reorganization is one of the most important public interests.” *Gander Partners*, 432 B.R. at 789. Indeed, the very purpose of bankruptcy is to provide debtors with a breathing spell so they can pursue a consensual resolution with their creditors. *Cf. Air Line Stewards & Stewardesses Ass’n, Local 550 v. Trans World Airlines, Inc.*, 630 F.2d 1164, 1166 (7th Cir. 1980) (“Federal courts look with great favor upon the voluntary resolution of litigation through settlement.”), *aff’d* 455 U.S. 385 (1982). Here, there is no dispute that an injunction and temporary stay of the guaranty

lawsuits will avoid a race to the courthouse, preserve a substantial contribution that will fund a plan of reorganization, and provide the parties with a window to pursue a consensual resolution in the chapter 11 case. A1041:15–1042:8.

Nor have Appellees identified any harm that they will suffer from a temporary stay of their guaranty lawsuits other than the inability to improperly jump to the front of the creditor line. The Debtors only seek a temporary—not permanent—injunction. Appellees will still have their claims—and those claims will provide Appellees with significant leverage in negotiating a consensual reorganization. And if no deal is reached, Appellees will be able to pursue their claims.

* * *

The bankruptcy court’s refusal to enjoin the guaranty actions turns entirely on a mistaken, formalistic reading of Seventh Circuit precedent that transforms § 105(a) from a robust tool for protecting the integrity of a bankruptcy estate into an empty shell, useful only when not really needed. Once that purely legal error is corrected, then based on the undisputed facts and the facts found by the bankruptcy court, it follows that the Debtors are entitled to an injunction. This Court

should therefore reverse and order entry of that injunction forthwith. *See, e.g., League of Wilderness Defenders/Blue Mountains Biodiversity Project v. Connaughton*, 752 F.3d 755, 767 (9th Cir. 2014) (“We remand to the district court with instructions for it to enter a preliminary injunction.”); *Virgin Enters., Ltd. v. Nawab*, 335 F.3d 141, 142-43 (2d Cir. 2003) (“We find that the plaintiff is likely to succeed on the merits and was entitled to a preliminary injunction. We therefore reverse and remand with instructions to enter a preliminary injunction.”).

II. Even Under A “Same Acts” Requirement, The Debtors Are Entitled To An Injunction

For the reasons explained in Part I.A., *supra*, the legal standard for a § 105 injunction is no different in the Seventh Circuit than anywhere else in the country: Simply put, there is no “same acts” requirement. But even if there were some kind of requirement to that effect for enjoining actions that threaten recovery from a party the debtor has a claim against, the bankruptcy court still should have enjoined the guaranty lawsuits here as a matter of law.

Although not *necessary* for § 105(a) relief, the Seventh Circuit has certainly held that whenever the claims of the estate and the third party arise from “overlap[ping]” and “closely related” acts of misconduct

ORAL ARGUMENT REQUESTED

No. 15-3259

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

IN RE: CAESARS ENTERTAINMENT OPERATING COMPANY, INC., ET AL.,
Debtors.

CAESARS ENTERTAINMENT OPERATING COMPANY, INC., ET AL.,
Plaintiffs-Appellants,

v.

BOKF, N.A., WILMINGTON SAVINGS FUND SOCIETY, FSB, MEEHANCOMBS
GLOBAL CREDIT OPPORTUNITIES MASTER FUND, LP, RELATIVE VALUE-
LONG/SHORT DEBT PORTFOLIO, A SERIES OF UNDERLYING FUNDS TRUST,
SB 4 CF LLC, CFIP ULTRA MASTER FUND, LTD., TRILOGY PORTFOLIO
COMPANY, LLC, AND FREDRICK BARTON DANNER,
Defendants-Appellees.

On Appeal from the United States District Court for the
Northern District of Illinois (Gettleman, J.), No. 1:15-cv-06504

Originating from the United States Bankruptcy Court for the Northern
District of Illinois (Goldgar, J.), Chapter 11 Case No. 15-01145
Adversary Proceeding No. 15-00149

OPENING BRIEF OF PLAINTIFFS-APPELLANTS

John C. O'Quinn

Counsel of Record

KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS

INTERNATIONAL LLP

655 15th Street, N.W.

Washington, D.C. 20005

Tel: (202) 879-5000

Fax: (202) 879-5200

Paul M. Basta, P.C.

Nicole L. Greenblatt

KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS

INTERNATIONAL LLP

601 Lexington Avenue

New York, N.Y. 10022

Tel: (212) 446-4800

Fax: (212) 446-4900

James H.M. Sprayregen, P.C.

David R. Seligman, P.C.

KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS

INTERNATIONAL LLP

300 North LaSalle

Chicago, Illinois 60654

Tel: (312) 862-2000

Fax: (312) 862-2200

Counsel for Debtors/Plaintiffs-Appellants

INTRODUCTION

The central question this appeal presents is whether the lower courts were correct in holding that 11 U.S.C. § 105(a) is only available to enjoin third-party litigation that affects the integrity of a bankruptcy estate if the third-party plaintiff's claims against a defendant arise out of the “*same acts*” as the estate's claims against that defendant. The sole basis for that holding—and for denying the Debtors' request for injunctive relief—is their incorrect interpretation of this Court's decisions in *In re Teknek, LLC*, 563 F.3d 639 (7th Cir. 2009), and *Fisher v. Apostolou*, 155 F.3d 876 (7th Cir. 1998), as imposing a “same acts” requirement. Respectfully, that fundamentally misunderstands this Court's precedent.

It is well-settled in this Circuit and elsewhere that bankruptcy courts have broad authority under 11 U.S.C. § 105(a) to issue “*any order ... that is necessary or appropriate*” to protect their jurisdiction and carry out the provisions of Title 11. Section 105(a) has been analogized to the All Writs Act—not just by the Debtors, A52, but by other circuits—as providing “the basis for a broad exercise of power in the administration of a bankruptcy case.” *In re Casse*, 198 F.3d 327, 336

(2d Cir. 1999) (internal quotations omitted). By contrast, the bankruptcy court itself recognized that its interpretation rendered this Court a national outlier, candidly observing that “courts have often issued section 105(a) injunctions to halt actions of the kind and under the circumstances the debtors describe.” A81. Yet it (erroneously) concluded that this Court follows “a different textbook” than everyone else, A82, and that, “[i]n the Seventh Circuit, the section 105(a) injunction is a more limited remedy than in other courts.” A73. Applying similar reasoning, the district court held that the Debtors are wrong that § 105 provides “the bankruptcy court with broad authority to grant injunctive relief to protect the ‘integrity of the bankruptcy estate.’” A53. But that is the broad, flexible standard this Court has repeatedly articulated—in *Fisher*, *Teknek*, and countless other cases—and that other circuits routinely apply. Because this Court is not an outlier, the decision below must be reversed.

The denial of injunctive relief is particularly egregious here. Although Appellees cast their third-party litigation against the Debtors’ parent company Caesars Entertainment Company (“CEC”) in the U.S. District Court for the Southern District of New York (Schiendlin, J.)

and in Delaware state court as run-of-the-mill enforcement of a guaranty, it is anything but. Appellees are themselves second-tier junior creditors of the Debtors. At the time CEC acted as guarantor to the Debtors in transactions with Appellees, CEC had no independent assets, other than its ownership interest in the Debtors. The guarantees, in other words, were ones of convenience, and Appellees knew any recovery would come from the Debtors and the Debtors alone. Debtors' contend that, over time, CEC siphoned off assets from them—giving rise to the estate's claims. The recovery now sought by the Appellees in their guaranty actions against CEC would thus come *directly from the very same assets* that the Debtors allege were fraudulently transferred to CEC; otherwise CEC would have nothing from which Appellees could recover.

That directly affects not just the amount of property in the Debtors' estates, but the allocation of property among creditors. In addition to thwarting the Debtors' multi-billion-dollar restructuring effort, which depends on a substantial contribution from CEC in settlement of the Debtors' claims against it, the upshot of the Appellees' actions is to let them jump the line in front of other creditors, including

more senior ones. In effect, it gives them priority in recovering against assets that should be part of the Debtors' estates—and to which more senior creditors should have priority—but now are in the hands of CEC.

Worse yet, to decide whether or not Appellees can prevail in their guaranty actions against CEC, the Southern District of New York is adjudicating whether the very transactions that, among other things, transferred the disputed assets from the Debtors to CEC were “routine corporate transactions” or were “undertaken as part of a plan to accomplish an out-of-court restructuring” of the Debtors' debt. *BOKF, N.A. v. Caesars Entm't Corp.*, 2015 WL 5076785, *11 (S.D.N.Y. Aug. 27, 2015). These are quintessentially issues for the bankruptcy process, not third-party litigation. If such litigation cannot be temporarily enjoined pursuant to § 105(a), it is hard to see what vitality § 105(a) has left in this Circuit.

Neither *Teknek* nor *Fisher* require such a result. To the contrary, consistent with other circuits, this Court has repeatedly held that a bankruptcy court has authority to enjoin third-party actions that threaten the bankruptcy estate under an inherently *flexible* standard—not the wooden formalism applied below. Under the correct standard,

the Debtors are entitled to a temporary injunction as a matter of law, and it is time for Appellees' race to judgment to come to an end. With a contribution from CEC, the Debtors have a reasonable likelihood of a successful reorganization, and the public interest strongly favors moving forward with a reorganization that will benefit over 32,000 employees and several dozen communities. This Court should reverse and remand with instructions to grant the Debtors' requested injunction.

STATEMENT OF JURISDICTION

The United States Bankruptcy Court for the Northern District of Illinois (Goldgar, J.) had jurisdiction over this core adversary proceeding "concerning the administration of the estate" under 28 U.S.C. §§ 157(b)(2)(A) and 1334(a). The bankruptcy court entered a final order denying all requested relief on July 22, 2015. A88-89. The Debtors timely filed their notice of appeal on July 24, 2015. A1223; *see also* Fed. R. Bankr. P. 8002(a)(1).

The United States District Court for the Northern District of Illinois (Gettleman, J.) had jurisdiction under 28 U.S.C. § 158(a)(1). The district court entered a final judgment affirming the bankruptcy

“‘common case’ where a creditor of a bankrupt corporation files a suit against the bankrupt’s insurer or guarantor.” A54.

This appeal follows.

SUMMARY OF ARGUMENT

The decisions denying a temporary stay of the guaranty actions are based on an inappropriately rigid and narrow interpretation of 11 U.S.C. § 105(a) and this Court’s precedents, which has no basis in law and that ultimately makes no sense. Because of its legally erroneous understanding of § 105(a), the bankruptcy court allowed actions in other courts to proceed that will undermine if not render completely unworkable the RSA at the center of the Debtors’ proposed plan of reorganization, that will allow one set of junior creditors to potentially raid the very assets of the Debtors’ estates that Debtors allege were fraudulently transferred to CEC, and that will adjudicate issues about the Debtors’ transactions that are more appropriate for the bankruptcy court than in third-party litigation. This untenable result is exactly what § 105(a) is supposed to prevent. The district court’s decision simply perpetuated the bankruptcy court’s error. The Debtors are entitled to the requested injunction.

1. The decisions below are flawed first and foremost because they cannot be reconciled with this Court’s well-established precedent that bankruptcy courts have broad authority to temporarily enjoin third-party actions that would defeat or impair the court’s jurisdiction or otherwise threaten the integrity of the bankrupt’s estate. The bankruptcy court acknowledged this is the law in other courts. Yet it held, despite clear precedent to the contrary, that this Court follows “a different textbook.” A82. That is simply not true. The decisions below hinge entirely on a fundamental misreading of *Fisher* and *Teknek*. Neither of those decisions adopted the “same acts” requirement the lower courts have imposed.

To the contrary, *Fisher* describes a bankruptcy court’s authority in broad terms, and it expressly condones § 105(a) injunctions to temporarily halt third-party actions that will “affect the amount of property in the bankrupt estate or the allocation of property among creditors.” *Fisher*, 155 F.3d at 882 (quotation marks and citations omitted). And *Teknek* focuses principally on the question of who owned a claim and would ultimately be able to recover a final judgment—thereby exhausting the claim—not whether *temporary* injunctive relief

was appropriate. Here, of course, the Debtors merely seek temporary relief until 60 days after the examiner issues his report, so that, through the bankruptcy process, all of the relevant stakeholders can evaluate and respond to the examiner's assessment of the disputed transactions and perhaps achieve consensus on restructuring.

Moreover, the precedent cited in *Fisher* and *Teknek* adopt the same broad language when it comes to the scope of § 105(a), and cite leading § 105(a) decisions from other circuits. To hold, as the courts below did, that this Court adopted a novel legal rule that breaks from the uniform consensus across the circuits without saying so (and while relying on decisions from other circuits) is far-fetched. As *Fisher* itself makes clear, enjoining third-party actions arising from the same acts as estate claims is within the heartland of a bankruptcy court's § 105(a) power, not its outer limit. Yet, the decisions below would limit *Fisher* to its facts. Ultimately, the decisions below lead to the anomalous situation where a bankruptcy court has broad discretion to enjoin third party actions that will merely "distract" debtors from reorganization or hinder the pace of reorganization, but virtually no authority to *temporarily* enjoin actions that would fundamentally thwart the

reorganization, that would effectively change the allocation of property among creditors, and that would permit a subset of junior creditors to leapfrog the others and recover assets that rightfully belong to the estate. That cannot be the law.

2. Even if some form of “same acts” requirement exists, it is readily satisfied here. The courts below held that injunctive relief was not available because Appellees’ “claims against CEC do not in any way depend on CEC’s misconduct with respect to CEOC.” A51. But there is no support in *Fisher* and *Teknek* for holding that two claims arise from the same acts only if the elements of the respective causes of action require identical proof. Neither case even discussed the elements of the relevant underlying causes of action. Instead, even assuming a debtor must show that its claims involve the “same acts” that give rise to the third-party plaintiff’s claim, the question should be whether those claims arise from overlapping or closely related acts of alleged misconduct by the non-debtor defendant involving the debtor. That is precisely the case here, where the claims of both the Debtors and the Appellees arise from the same series of capital market transactions by CEC involving *the very assets* from which Appellees now seek to recover.

strong operating business, a “diversified footprint of casinos across a number of states,” a strong brand name, and an iconic presence in Las Vegas—all propositions with which Appellees’ sole witness agreed. A1215:17-1216:20. Nor is there any dispute that the Debtors have substantial earnings before interest, taxes, depreciation, and amortization (EBITDA)—approximately \$1 billion—and free cash flow after capital expenditures. A1057:12–1058:19; *see also* A1028-29. The Debtors’ primary problem is over-leverage, but that is a problem chapter 11 reorganization is well-suited to address. A1057:12–1058:19; A1217:14-19. Indeed, there is no evidence or argument that the Debtors are unlikely to reorganize successfully, assuming a significant contribution from CEC. *See In re Lyondell*, 402 B.R. at 590 (finding likelihood of successful reorganization where debtors “have so far been successful in doing everything they’ve needed to do to date”).

3. The Public Interest Favors Issuing The Requested Injunction

The temporary injunction that the Debtors seek here is in the public interest. “Promoting a successful reorganization is one of the most important public interests.” *Gander Partners*, 432 B.R. at 789 (internal quotations omitted). Indeed, the very purpose of bankruptcy

is to provide debtors with a breathing spell so they can pursue a consensual resolution with their creditors. *Cf. Air Line Stewards & Stewardesses Ass’n, Local 550 v. Trans World Airlines, Inc.*, 630 F.2d 1164, 1166 (7th Cir. 1980) (“Federal courts look with great favor upon the voluntary resolution of litigation through settlement.”), *aff’d*, 455 U.S. 385 (1982). Here, there is no dispute that an injunction and temporary stay of the guaranty lawsuits will avoid a race to the courthouse, preserve a substantial contribution that will fund a plan of reorganization, and provide the parties with a window to pursue a consensual resolution in the chapter 11 case. A1068:15–1069:8.

Nor have Appellees identified any legally cognizable harm that they will suffer from a temporary stay of their guaranty lawsuits other than the inability to improperly jump to the front of the creditor line. The Debtors only seek a temporary—not permanent—injunction. Appellees will still have their claims, and those claims will provide Appellees with significant leverage in negotiating a consensual reorganization. On appeal to the district court, Appellees revealed the true reason they do not want the guaranty actions stayed: they fear a plan might be confirmed by the bankruptcy court that could release

their claims against CEC. A1289. But that is a dispute for the bankruptcy court to resolve in the context of plan confirmation proceedings. Rather than oppose confirmation at the proper time, however, Appellees seek to sidestep the bankruptcy process and claim exclusively for themselves the very assets from CEC that the Debtors seek for equitable distribution to *all* creditors. This blatant attempt to “defeat or impair” the bankruptcy court’s jurisdiction and the bankruptcy process is precisely when a court *should* exercise its § 105 authority. *L & S Indus.*, 989 F.2d at 932.

* * *

The lower courts’ refusal to enjoin the guaranty actions turns entirely on a mistaken, formalistic reading of Seventh Circuit precedent that transforms § 105(a) from a robust tool for protecting the integrity of a bankruptcy estate into an empty shell, useful only when not really needed. Once that purely legal error is corrected, then given the undisputed facts and the facts found by the bankruptcy court, it follows that the Debtors are entitled to an injunction. This Court should therefore reverse and order entry of that injunction forthwith. *See, e.g., League of Wilderness Defenders/Blue Mountains Biodiversity Project v.*

Connaughton, 752 F.3d 755, 767 (9th Cir. 2014) (“We remand to the district court with instructions for it to enter a preliminary injunction.”); *Virgin Enters., Ltd. v. Nawab*, 335 F.3d 141, 142-43 (2d Cir. 2003) (“We find that the plaintiff is likely to succeed on the merits and was entitled to a preliminary injunction. We therefore reverse and remand with instructions to enter a preliminary injunction.”).

CONCLUSION

For the foregoing reasons, this Court should reverse and remand with instructions to immediately enjoin the guaranty actions until 60 days after the bankruptcy-court-appointed examiner issues his final report.

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:

CAESARS ENTERTAINMENT OPERATING
COMPANY, INC., *et al.*,¹

Debtors.

CAESARS ENTERTAINMENT OPERATING
COMPANY, INC., *et al.*,

Plaintiffs,

v.

BOKF, N.A., WILMINGTON SAVINGS FUND
SOCIETY, FSB, MEEHANCOMBS GLOBAL
CREDIT OPPORTUNITIES MASTER FUND, LP,
RELATIVE VALUE-LONG/SHORT DEBT
PORTFOLIO, A SERIES OF UNDERLYING
FUNDS TRUST, SB 4 CF LLC, CFIP ULTRA
MASTER FUND, LTD., TRILOGY PORTFOLIO
COMPANY, LLC, and FREDERICK BARTON
DANNER,

Defendants.

)
) Chapter 11
)

) Case No. 15-01145 (ABG)
)
)

) (Jointly Administered)
)

) Chapter 11
)

) Adversary Case No. 15-00149
)

) **Hearing Date:** _____
)

**DEBTORS' NOTICE OF OPINION FROM THE
UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT
AND MOTION FOR EMERGENCY REQUEST FOR RULING**

¹ A complete list of the Debtors and the last four digits of their federal tax identification numbers may be obtained at <https://cases.primeclerk.com/CEOC>.

Pursuant to Local Rule 9013-1(I), the Debtors hereby respectfully request that the Court promptly rule on and grant the Debtors' motion for an injunction temporarily enjoining Defendants from prosecuting their guaranty claims against the Debtors' ultimate parent Caesars Entertainment Corporation ("CEC"). In support thereof, the Debtors respectfully state as follows:

1. On December 23, the United States Court of Appeals for the Seventh Circuit issued an opinion vacating the denial of the injunction requested by the Debtors in the above-captioned adversary proceeding and remanding the case to this Court to determine whether to issue the injunction under the appropriate legal standard. *See CEOC v. BOKF, N.A.*, Case No. 15-3259 [Dkt. 46] ("Slip Op.") at 9.²

2. The Seventh Circuit concluded that this Court and the District Court read Bankruptcy Code section 105(a) too narrowly in holding that only a lawsuit arising from the "same acts" of the non-debtor that gave rise to the disputes in the bankruptcy proceeding may be enjoined under the statute. *Id.* at 4, 9. Instead, section 105(a) grants "broad" and "extensive equitable powers that bankruptcy courts need in order to be able to perform their statutory duties." *Id.* at 3, 4. Thus, the proper statutory inquiry under section 105(a) is whether the requested injunction is "likely to enhance the prospects for a successful resolution of the disputes" related to the bankruptcy and whether "its denial will thus endanger the success of the bankruptcy proceedings." *Id.* at 4. If the answer to these questions is yes, "the grant of the injunction would, in the language of section 105(a), be 'appropriate to carry out the provisions' of the Bankruptcy Code, since successful resolution of disputes arising in bankruptcy proceedings is one of the Code's central objectives." *Id.* at 4–5.

² A copy of the Slip Opinion is attached as Exhibit B for the Court's convenience.

3. While reserving any factual questions for this Court, the Seventh Circuit recognized that the interests of CEOC's creditors in the chapter 11 cases "would be furthered by a temporary injunction staying the lenders' lawsuits against CEC." *Id.* at 5. If guarantor liability were imposed on CEC, "CEC's ability to satisfy CEOC's fraudulent-conveyance claims against it—and thus pay other creditors—would be impaired." *Id.* at 8–9. The Seventh Circuit further recognized that "the issuance of a temporary injunction against a class of creditors could well facilitate a prompt and orderly wind-up of" what Judge Posner described as "an immense, and immensely complicated, bankruptcy proceeding." *Id.* at 1, 7. If freezing the guaranty litigation for 60 days following the issuance of the Examiner report would give the Debtors' stakeholders a "clear shot at negotiating an overall settlement of what amounts to a three-cornered battle" among CEC, the guaranty plaintiffs (which are the Defendants here), and CEOC's other creditors, the Seventh Circuit concluded "there is nothing in section 105(a) to bar the order sought by CEOC." *Id.* at 5–6.

4. Given the Seventh Circuit's opinion and the fact that CEC faces imminent potentially case-dispositive summary judgment rulings in the guaranty lawsuits, the Debtors respectfully request that the Court immediately rule on the Debtors' motion and enter the requested injunction. The Court already recognized that the Debtors' motion presented a "familiar"—indeed, "textbook"—pattern for which section 105(a) relief is frequently granted. Mem. Op. [Dkt. 158] ("Op.") at 28. The Court likewise acknowledged that "courts have often issued section 105(a) injunctions to halt actions of the kind and under the circumstances the debtors describe," and "[i]n some cases, the mere possibility that the action could impair the non-debtor's financial support of the debtor's reorganization was enough to warrant relief." *Id.*

at 27–28 (citing cases). But the Court held that no relief was possible because the Seventh Circuit imposed a “same acts” requirement that the Debtors could not satisfy here. *Id.* at 28.

5. The Seventh Circuit has now confirmed that there is no “same acts” requirement. Slip. Op. at 4. It also found that this Court’s “exercise of jurisdiction over the [guaranty suits] would have been constitutional.” *Id.* at 3. Thus, the only questions remaining for this Court on remand are “whether the injunction sought by CEOC is likely to enhance the prospects for a successful resolution of the disputes attending to its bankruptcy” and whether denying the requested relief “will thus endanger the success of the bankruptcy proceedings.” *Id.* at 4. The answers to these questions—based on a mountain of undisputed evidence that the Debtors presented at trial—are yes.

6. Nothing has changed since the Debtors established at trial that an injunction is necessary to provide the Debtors with an opportunity to resolve the numerous, complex disputes plaguing the Debtors’ restructuring and to avoid endangering the success of the restructuring process. Given the extensive evidence presented on these issues, the Court can now render a decision on remand based on the trial record.

7. As established at trial, the Debtors have two principal assets around which to reorganize: an operating business and estate claims against CEC. June 3 Tr. 35:14–36:2, 43:20–45:3 (Millstein). CEC has agreed to make substantial contributions, both direct financial contributions and credit support for a value-maximizing REIT structure and securities that will be distributed to creditors under a plan, to the Debtors’ restructuring to settle the estate’s claims against CEC. *Id.* at 36:3–14, 40:10–14 (Millstein). CEC’s financial advisor valued CEC’s contribution at a minimum of \$2.3 to \$2.5 billion. *Id.* at 193:2–195:1 (Zelin). The Debtors’ former financial advisor, Perella Weinberg, valued it at a minimum of \$1.5 billion. *Id.* at 79:21–

80:2, 97:5–8 (Millstein). CEOC’s current financial advisor, Millstein & Co., was still in the process of valuing the contributions at the time of trial but confirmed they were “substantial.” *Id.* at 40:15–41:22.

8. A subset of CEOC’s creditors, however, has been aggressively seeking judgments against CEC in lawsuits outside of this bankruptcy case to recover \$11 billion in alleged guaranty claims, including a lawsuit that the first lien trustee filed after trial seeking more than \$6 billion. *Id.* at 49:17–50:23 (Millstein), 207:2–208:2 (Zelin); *see also* Compl., *UMB Bank, N.A. v. Caesars Entm’t Corp.*, No. 1:15-cv-04634-SAS (S.D.N.Y. 2015).³ These lawsuits threaten to render CEC insolvent and prevent the Debtors from recovering *any* assets from CEC. Indeed, it is undisputed that both the Debtors’ estate claims and these creditors’ guaranty claims seek to recover from the same limited pool of assets from the same entity (CEC). *See* June 3 Tr. 69:24–70:7, 128:25–129:15, 143:24–144:4 (Millstein); June 4 Tr. 308:9–13 (Lyon). It is likewise undisputed that CEC lacks the ability to both satisfy the guaranty claims and make any meaningful contribution to the estate on account of the estate’s claims. *See* June 3 Tr. 49:17–51:22 (Millstein), 207:11–208:2 (Zelin); DX 78.

9. Nor can there be a dispute that the guaranty litigation threatens the Debtors’ reorganization. Litigation that could eliminate the Debtors’ ability to recover on one of their principal estate assets diminishes their ability to efficiently reorganize and maximize creditor recoveries. As part of a Restructuring Support Agreement (“RSA”), the Debtors have negotiated substantial contributions from CEC on account of estate claims. June 3 Tr. 36:3–14, 40:10–14

³ The Debtors previously asked the Court to take judicial notice of this post-trial complaint. *See* Dkt. 150. The Court found that it can take judicial notice of the records of other courts in related matters. *Op.* at 13 n.11, citing *Bank of Commerce & Trust Co. v. Strauss (In re Strauss)*, 523 B.R. 614, 623 n.7 (Bankr. N.D. Ill. 2014). A copy of the UMB complaint is attached as Exhibit C.

(Millstein). Although the Debtors believe the RSA framework is the right blueprint for a value maximizing plan, the Debtors' ability to formulate *any* plan of reorganization heavily depends on their ability to recover against CEC on account of estate claims. *Id.* at 44:16–45:3 (Millstein). CEC, however, has publicly disclosed that “were a court to find in favor of the claimants in any of these Noteholder Disputes, such determination could have a material adverse effect on our business, financial condition, results of operations, and cash flows. Accordingly, we have concluded that the material uncertainty related to certain of the Litigation proceeding against CEC raises substantial doubt about the Company’s ability to continue as a going concern....” PX 34 (CEC 10-Q, May 11, 2015) at 8. This language is shorthand that CEC itself will file for bankruptcy if a court finds in favor of the guaranty claimants in any of their cases. June 3 Tr. 53:9–55:24 (Millstein). Simply put, an adverse decision in the guaranty litigation would materially diminish CEC’s ability to fund and otherwise support the Debtors’ restructuring, rendering moot the Debtors’ chapter 11 plan (predicated on the RSA) currently on file and putting the Debtors back at square one in their efforts to reorganize.

10. Consistent with the evidence at trial, the guaranty actions are on a trajectory that continues to directly threaten the Debtors’ reorganization. At the time of trial, both courts hearing the guaranty litigation had denied CEC’s motions to dismiss. *See* DX 69 (MeehanCombs Op.) at *5 (“[T]he Complaint’s plausible allegations that the August 2014 Transaction stripped plaintiffs of the valuable CEC Guarantees leaving them with an empty right to assert a payment default from an insolvent issuer are sufficient to state a claim under section 316(b).”); *see also* DX 70 (WSFS Op.). Judge Scheindlin also had permitted Defendant BOKF to seek early summary judgment on an expedited schedule, even before discovery concluded and over CEC’s objection that material factual disputes precluded summary judgment. *See* DX 136

(May 28, 2015 Order) at 3. She reasoned that “I will not limit BOKF from attempting to vindicate noteholders’ rights under non-bankruptcy law.” *Id.* Shortly after trial, the District Court also permitted UMB to file early summary judgment. June 19, 2015 Order, Case No. 1:15-cv-01561-SAS [Dkt. 27] at 5.⁴

11. On August 27, Judge Scheindlin denied the expedited motions for summary judgment filed by BOKF and UMB. Op. and Order, Case No. 1:15-cv-01561-SAS [Dkt. 54].⁵ She found that there were disputed factual issues as to whether CEC violated the Trust Indenture Act by stripping the guaranties as part of an out-of-court restructuring without the consent of the noteholders. *Id.* at 32–33.

12. On November 20, BOKF and UMB filed another motion for summary judgment on the grounds that CEC’s sale of five percent of CEOC’s stock in May 2014 and CEOC’s grant of six percent of its stock in June 2014 to certain directors and officers was not sufficient to release the guaranties as a matter of law under the plain language of the indentures. *See* Mem. in Supp. of Mot. for Summ. J., Case No. 1:15-cv-04634-SAS [Dkt. 69] at 1, 3.⁶ BOKF and UMB argue the word “and” between the subparts of the guaranty release provision requires that all three subparts must occur for the guaranty to be released. They assert that because CEC admits two of the subparts have not been satisfied, the guaranty remains in place. *Id.* at 2–3. Judge Scheindlin previously indicated that the contractual interpretation issue raised by BOKF’s and UMB’s latest summary judgment motion may be dispositive. Op. and Order, Case No. 1:15-cv-

⁴ As it previously held, this Court can take judicial notice of the records of other courts in related matters. Op. at 13 n.11. A copy of the June 19 order is attached as Exhibit D.

⁵ A copy of Judge Scheindlin’s August 27 opinion is attached as Exhibit E.

⁶ A copy of UMB’s and BOKF’s joint Memorandum in Support of Summary Judgment is attached as Exhibit F.

04634-SAS [Dkt. 54] at 38 (“It may be that the contract interpretation issue related to the release provision—which the parties have not briefed for this motion—will be dispositive.”). The motion has been fully briefed since December 11 and Judge Scheindlin may rule any day. If CEC survives summary judgment, the case is set for a two-week jury trial beginning March 14, 2016. 11/10/15 Status Conference Tr. at 20.⁷

13. MeehanCombs and Danner likewise have moved for summary judgment on certain of their claims. They argue that because the Senior Unsecured Notes Transaction in August 2014 (*see Op.* at 10–11) removed CEC’s guaranty without their consent, it violated the Trust Indenture Act, and breached the indentures as a matter of law. MeehanCombs Mem. in Supp. of Mot. for Summ. J., Case No. 1:14-CV-07091-SAS [Dkt. 67] at 9–10;⁸ Danner Mem. in Supp. of Mot. for Summ. J., Case No. 1:14-cv-07973-SAS [Dkt. 61] at 1.⁹ These motions have been fully briefed since December 2. If CEC survives summary judgment, trial on these claims is set for May 9, 2016. 11/10/15 Status Conference Tr. at 34.

14. Given the imminent rulings on the potentially case-dispositive summary judgment motions and upcoming trial settings, the first of the guaranty claims can be decided any day, and will be decided no later than late March 2016. Both CEC’s and the Debtors’ financial advisors testified at trial that, because the language of the guaranties is very similar (and in some cases identical), CEC likely will file for bankruptcy if it suffers an adverse judgment in any of the guaranty actions. CEC lacks the financial wherewithal to post an appeal bond on a multi-billion

⁷ A copy of the transcript from Judge Scheindlin’s November 10 status conference, during which she set trial dates for both of the guaranty actions, is attached as Exhibit G.

⁸ A copy of MeehanComb’s Memorandum in Support of Summary Judgment is attached as Exhibit H.

⁹ A copy of the Danner Plaintiff’s Memorandum in Support of Summary Judgment is attached as Exhibit I.

dollar judgment, meaning that any such judgment entered against it—even with respect to a liability finding only—would be effectively final. June 3 Tr. 49:17–51:22, 53:9–56:22, 115:12–116:7, 138:21–139:11 (Millstein); *see also id.* at 204:17–205:13, 208:3–21, 209:10–17 (Zelin); June 4 Tr. 131:2–132:2 (Zelin).

15. The requested injunction would preserve, at least in the interim, CEC’s ability to participate in the Debtors’ restructuring and provide a path forward to a consensual resolution of these bankruptcy cases in the first half of 2016. The injunction would provide a brief—yet critical—60-day window following the issuance of the Examiner report for the Debtors and other parties in interest to try to reach a consensual, value-maximizing plan that contains significant funding contributions and credit support from CEC. June 3 Tr. 71:15–72:14 (Millstein), 212:4–214:4 (Zelin), 191:14–21 (Eisenberg). To accomplish this, the Debtors need to ensure that the entity from which they seek to extract these contributions (CEC) has the resources and value to fund them. A temporary stay will funnel to the reorganization process all of the claims that relate to the estate, providing the parties with a strong incentive to reach a consensual resolution in the chapter 11 case. *Id.* at 72:15–73:8 (Millstein). And extending that stay until 60 days after the Examiner issues his final report will allow the parties to attempt to complete those negotiations armed with important and objective reference points about the estate’s and guaranty claims to the same assets. The alternative—a potential CEC chapter 11 filing—would at a minimum substantially delay any hope for a prompt resolution of the numerous disputes related to the chapter 11 cases, dramatically change total creditor and inter-class recoveries, increase professional costs, and leave this Court to sort out one of the great “messes of our time.” *Id.* at 56:23–57:9, 59:8–14 (Millstein). In short, there is little to lose and nearly everything to gain by

enjoining Defendants from proceeding in the guaranty litigation until 60 days after the Examiner issues his final report.

16. At a minimum, the Court should enter a temporary injunction staying the guaranty litigation pending resolution of the Debtors' motion for injunctive relief. As set forth above, no additional evidence is necessary for this Court to decide the motion for an injunction (other than the limited undisputed procedural facts about the status of the guaranty litigation, of which the Court can take judicial notice). If for whatever reason the Court determines it cannot resolve the motion on the existing record, however, the Court should grant temporary injunctive relief until it conducts whatever additional proceedings it deems necessary. *See, e.g., Interstate Commerce Comm'n v. Cardinale Trucking Corp.*, 308 F.2d 435, 438 (3d Cir. 1962) (vacating denial of plaintiff's request for injunctive relief and directing district court to issue a temporary restraining order pending disposition of the issues on remand); *Doctor's Assocs., Inc. v. Distajo*, 944 F. Supp. 1007, 1008, 1010 (D. Conn. 1996) (enjoining 16 franchisee state court lawsuits until federal court decided issues on remand regarding franchisor's motion to compel arbitration under franchise agreements).

17. Here, the Debtors' evidence regarding the status of their reorganization at the time of trial easily establishes a reasonable likelihood of successfully reorganizing assuming the guaranty lawsuits are stayed. As defense expert Grant Lyons conceded, the Debtors have a strong operating company. June 4 Tr. 320:17–321:20. In fact, the Debtors have approximately \$1 billion of EBITDA and substantial free cash flow after capital expenditures. June 3 Tr. 60:12–61:19 (Millstein); *see also* PX 84. The Debtors also have a “diversified footprint of casinos across a number of states,” a strong brand name, and an iconic presence in Las Vegas. June 4 Tr. 321:3–10 (Lyon). The Debtors' principal problem is a highly-levered balance sheet—

a problem chapter 11 is well suited to solve. *Id.* at 322:14–19; June 3 Tr. 60:12–61:19 (Millstein). At the time of the trial, the Debtors had made significant progress in these chapter 11 cases. Among other things, the Debtors at the time of trial had reached agreement with a large majority of CEOC’s first lien noteholders and CEC on the economic terms of a restructuring as set forth in the RSA, obtained essential first-day relief, negotiated for the long-term use of cash collateral, moved for the appointment of an examiner who is investigating a series of disputed transactions, announced a market test, and obtained a six-month extension of exclusivity. June 3 Tr. 48:6–9, 63:1–12, 98:19–25 (Millstein); PX 84; Dkt. Nos. 988, 992, 1690.

18. And, although not necessary for injunctive relief under section 105, the irreparable harm to the Debtors is clear. Should the guaranty litigation result in an adverse decision forcing CEC to file for chapter 11 while this Court is deciding the issues on remand from the Seventh Circuit, it will severely impair the Debtors’ ability to reorganize in the near term. Given the Seventh Circuit’s opinion, as well as the existing evidentiary record, the Debtors’ motion should ultimately be granted; allowing the very harm an injunction was intended to prevent to occur while the Debtors’ motion is on remand would be unjust. By contrast, Defendants will lose nothing if the Court issues a temporary injunction while resolving the Debtors’ request, other than their ability to prosecute the guaranty litigation for the brief amount of time it will take the Court to decide the issues on remand.

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Dated: December 28, 2015
Chicago, Illinois

/s/ Jeffrey J. Zeiger, P.C.

James H.M. Sprayregen, P.C.

David R. Seligman, P.C.

David J. Zott, P.C.

Jeffrey J. Zeiger, P.C.

KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS INTERNATIONAL LLP

300 North LaSalle

Chicago, Illinois 60654

Telephone: (312) 862-2000

Facsimile: (312) 862-2200

- and -

Paul M. Basta, P.C.

Nicole L. Greenblatt

KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS INTERNATIONAL LLP

601 Lexington Avenue

New York, New York 10022-4611

Telephone: (212) 446-4800

Counsel to the Debtors and Debtors in Possession

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:

CAESARS ENTERTAINMENT
OPERATING COMPANY, INC., *et al.*,
Debtors.

Chapter 11

Case No. 15-01145 (ABG)

(Jointly Administered)

**MOTION OF NOTEHOLDER COMMITTEE FOR ORDER GRANTING STANDING
TO COMMENCE, PROSECUTE, AND SETTLE CLAIMS ON BEHALF OF THE
DEBTORS' ESTATES**

The Official Committee of Second Priority Noteholders (the “Noteholder Committee”) moves for entry of an order granting it derivative standing to pursue the claims set forth in the draft Complaint attached as Exhibit A (the “Complaint”) as well as any other claims arising out of the facts plead.¹ The Complaint includes claims to recover constructive and intentional fraudulent transfers as well as claims for breach of fiduciary duty, aiding and abetting breach of fiduciary duty, and other claims against Caesars Entertainment Corporation (“CEC”), the controlling shareholder of debtor Caesars Entertainment Operating Company, Inc. (“CEOC”), certain of CEC’s and CEOC’s directors and officers, the Sponsors, and others for knowingly participating in the wrongdoing alleged in the Complaint.²

¹ The final form of the Noteholder Committee’s Complaint will include additional information currently designated as confidential, including information contained in the Examiner’s report that has, to date, been redacted in the public version of that report. A revised version of the Complaint that includes such information will be filed when the final form of the Examiner’s report is available.

² The Noteholder Committee has discussed joint prosecution of these claims with the Statutory Unsecured Claimholders Committee (the “UCC” and, together with the Noteholder Committee, the “Committees”). The Noteholder Committee is willing to prosecute and settle the claims jointly with the UCC, on appropriate terms and conditions.

I. PRELIMINARY STATEMENT

1. The claims to be pursued by the Noteholder Committee arise from a series of self-dealing prepetition transactions between CEOC—which at all relevant times was an insolvent corporation—and entities owned and controlled by CEC or the Sponsors involving asset transfers made for grossly-inadequate consideration and financial transactions intended to benefit CEC and the Sponsors at CEOC’s expense. The purpose and effect of those transactions was to enrich CEC and its affiliates and shareholders by moving billions of dollars of CEOC’s assets beyond the reach of CEOC’s creditors, and by protecting CEC and the Sponsors and other entities including those termed bankruptcy remote in CEOC’s inevitable bankruptcy case.

2. In his exhaustive report (ECF No. 3401) (“Report” or “Rep.”), the Examiner concluded that those insider transactions give rise to claims against CEC, the Sponsors, and numerous other defendants that will generate billions of dollars (in damages and the value of the property returned) for the Debtors and their estates. Among other things, the Examiner found that CEC and CEOC’s directors and officers violated their fiduciary duties to CEOC and its creditors by approving the transfers, and that those repeated breaches of duty were aided and abetted by CEC’s directors and Sponsors.

3. The Debtors, who remain under the control of many of the same individuals who have been identified by the Examiner as wrongdoers and potential defendants, have taken no action to pursue claims against any of those entities. To the contrary, CEOC repeatedly tried to *extinguish* claims against its insiders and affiliates, first by seeking a declaratory judgment that no viable claims exist and later by agreeing to release all insiders and potential defendants pursuant to various Restructuring Support Agreements (each an “RSA”). Every Plan version filed by the Debtors has provided for the same global releases and immunization of insiders.

4. The Debtors' two-person Special Governance Committee ("SGC"), which was hand-picked by directors that face liability,³ lacks sufficient independence to bring or compromise claims against the incumbents who appointed them. This is evidenced not only by the SGC's abdication of responsibility to preserve the claims, but also by the unfavorable terms of the RSA "settlement" negotiated by the SGC even while discovery collected by the Examiner showed that the deal cut by the SGC was grossly inadequate (and later determined to be a fraction of the probable recoveries the Examiner identified). Making matters worse, the SGC's financial advisor—on whom the SGC relied in valuing the estate claims—was tainted all along, prompting the Court to conclude that the SGC's analysis and conclusions are "not useful."

5. In these circumstances, the Debtors cannot be faithful stewards of the estate causes of action, and the Noteholder Committee is the proper entity to preserve those critical assets. Unlike the Debtors, the Noteholder Committee will maximize the value of the claims, through vigorous prosecution or settlement, for the benefit of the estates and their creditors, free of the inherent conflicts of interest and constraints that taint the Debtors and the SGC. Moreover, if the claims are brought by the Noteholder Committee, as much as \$280 million of insurance coverage will be available to the Debtors' estates; if the claims remain in the hands of the Debtors, that insurance vanishes. With the limitations period approaching, the time has come to authorize the Noteholder Committee to preserve, pursue and recover the claims.

³ CEC and the Sponsors have previously appointed other special committees to review at least two of the challenged transactions. (Rep. at 38-39, 48-51.) Then, as now, CEC had a fiduciary duty to CEOC as its controlling shareholder and then, as now, it was the Sponsors that decided who would serve on those committees. As the Examiner found, those special committees did nothing to prevent—and, in fact, affirmatively aided and abetted—the very transactions that the Examiner concluded were intentionally fraudulent transfers and constituted breaches of fiduciary duty. The special committees were mere formalities whose members went through the motions of governance, while obvious fraudulent transfers occurred under their noses. CEOC received no protection from those earlier special committees, and it would be naive to conclude that this new special committee (the SGC), appointed by the same Sponsor-controlled board, will be any different than its predecessors.

II. BACKGROUND

6. Valuable Claims Exist With Respect To The Fraudulent Prepetition Transactions.

Beginning in 2009 and continuing through the commencement of these bankruptcy cases, the Debtors' parent (CEC) and Sponsors (Apollo and TPG),⁴ together with various insiders and affiliates, engaged in transactions that were detrimental to the interests of CEOC and its creditors. As summarized by the Examiner on the first page of his Report:

The principal question being investigated was whether in structuring and implementing these transactions assets were removed from CEOC to the detriment of CEOC and its creditors.

The simple answer to this question is "yes." As a result, claims of varying strength arise out of these transactions for constructive fraudulent transfers, actual fraudulent transfers (based on intent to hinder or delay creditors) and breaches of fiduciary duty by CEOC directors and officers and CEC. Aiding and abetting breach of fiduciary duty claims, again of varying strength, exist against the Sponsors and certain of CEC's directors. (Rep. at 1.)

7. The Examiner concluded that "[t]he potential damages from those claims considered reasonable or strong range from \$3.6 billion to \$5.1 billion." (Rep. at 1.) Those massive damages were attributed just to claims deemed likely to succeed; the Examiner defined "strong" claims as those "having a high likelihood of success" and "reasonable" claims as those "having a reasonable, or better than 50/50, chance of success." (Rep. at 1 n.3.) The Examiner did not quantify other claims characterized as "plausible" or "weak" but nevertheless viable, such as billions of dollars of claims for the value of Caesars Interactive Entertainment, Inc. (Rep. at 27-28) and challenges to any "good faith" defense asserted by Caesars Growth Partners and other defendants (Rep. at 78, 412-13, 651-52). The Examiner's quantification also excluded several categories of damages determined to be available on the strong and reasonable claims but not calculated in the Report, such as claims for lost profits (Rep. at 12-13, 20, 26, 423), the

⁴ All capitalized terms not otherwise defined have the meaning used in the Report.

appreciation in the value of fraudulently-transferred properties (Rep., App. 5, at 93), the value impairment caused by the removal of Octavius Tower from Caesars Palace (Rep. at 47), the transfer to CES of control over the Total Rewards program (Rep. at 58), and prejudgment interest (Rep. at 412).

8. The Debtors And The SGC Abdicated Their Duty To Maximize The Value Of The Claims. In late June 2014, CEOC appointed Steven Winograd and Ronen Stauber (together, the “SGC Directors”) to its board as the sole members of a “Special Governance Committee.” The Examiner concluded that the SGC Directors are “independent” under Delaware law, but there are many reasons to question their appetite and ability to prosecute claims against CEC, the Sponsors, CEC’s and CEOC’s directors, and other potential defendants.⁵ For example, in early July 2014, shortly after appointment of the SGC Directors, CEOC formed the SGC with a charter granting the SGC Directors “*sole authority and responsibility* for, inter alia: (1) the consideration, negotiation and approval of any ‘Related Party Transaction’ or other transaction or *matter involving a material conflict of interest* (as determined in the reasonable judgment of the Committee) affecting any of the Directors or any person or group beneficially owning, directly or indirectly, more than 5% of outstanding class of equity securities of the Company.” (Rep. at 926 (emphasis added).) Notwithstanding that grant of “sole authority and responsibility,” the SGC Directors stood by passively when, just four days later, CEOC’s interested directors authorized the filing of a lawsuit to seek a declaration that CEOC had no

⁵ And the SGC Directors were oddly pliant. Both men were recruited as outside directors as early as February 2014, but – at the Sponsors’ suggestion – they agreed to postpone joining the CEOC board until the B-7 Transaction and Four Properties Transaction transactions were completed in June. (Rep. at 540, 929) Those multi-billion dollar transactions, of course, were found by the Examiner to be fraudulent transfers and breaches of fiduciary duties. The SGC Directors’ willingness to let the Sponsors decide when their fiduciary duties would kick in raises questions from the start about their independence.

viable claims, including claims against the same interested directors and their affiliates. Those, of course, were the very claims that the SGC was endowed with “sole authority and responsibility” to investigate. The SGC Directors remained silent even though they were not comfortable with the complaint (a lawsuit the Examiner described as “troubling”) and refused to sign off on it. (Rep. at 110 n.180; Exhibit B.)

9. The SGC Directors also stayed quiet during the ensuing six-month period from July to December 2014, when the Debtors implemented the wholesale transfer of CEOC’s workforce and enterprise services to CES. The Debtors now claim that those transfers make it difficult for the Debtors to pursue a “standalone plan” under which the claims could be prosecuted in a manner that would maximize their value. (ECF No. 3484, Ex. I.)

10. Thereafter, in December 2014, the SGC Directors blessed CEOC’s execution of an RSA with CEC and certain holders of CEOC First Lien Notes. Under that RSA, CEC agreed to pay money directly to holders of First Lien Notes who signed the RSA. In exchange for that payment, those holders agreed, among other things, to vote in favor of a CEOC plan that would provide CEC and other insider defendants with broad releases of estate and third-party claims. That RSA would have required CEC to make only a small contribution worth a fraction of the value of the claims to be released, as illustrated by the chart attached as Exhibit C. Other potential defendants who obtained releases, including the CEOC directors and Sponsors who hand-picked the outside directors, would not have been required to contribute anything.

11. That settlement apparently was based on the SGC’s conclusion, following an “investigation,” that claims belonging to the Debtors had a relatively modest value,⁶ dramatically

⁶ This information was provided by the Debtors to the Noteholder Committee on March 17, 2015, but was designated by the Debtor as confidential. The Noteholder Committee will request the Debtor to redesignate the document containing this information, or otherwise will seek relief to file the underlying document under seal in support of the Motion.

below the range of damages identified in the Examiner's Report. The Debtors subsequently attempted to justify the SGC's endorsement of such a terrible deal by claiming that the RSA was made "[b]ased on the information available at the time," and that SGC Directors "did not have sufficient information to determine whether fraudulent transfer claims based on an actual intent to delay, hinder or defraud creditors were likely to succeed." (ECF No. 3484, Ex. 1, at 38.) That is no excuse. No responsible, unconflicted fiduciary would ever settle viable causes of action for pennies on the dollar when it was aware that it lacked sufficient information to make a reasonable assessment of the claims.

12. The SGC's abdication of duty did not stop there. After the petition date, the Debtors (with the apparent endorsement of the SGC) moved for appointment of an examiner but tried to inhibit the investigation of CEC and other insiders by proposing to: (1) limit the investigation to a set of hand-picked transactions the Debtors had identified; (2) cap the budget of the examiner and his professionals; (3) limit the duration of the investigation; (4) prohibit the examiner from accessing privileged information; and (5) enjoin any other party (including the Noteholder Committee) from conducting its own investigation during the period of the examiner's investigation. (ECF No. 363, at 9-10.) The Court, of course, declined to impose those constraints, which paved the way for the Examiner's comprehensive report detailing the multitude of viable claims available against CEC, the Sponsors, and other insiders.

13. The Debtors continued to pursue the discounted RSA settlements over the course of the year after the commencement of these cases. The SGC endorsed this course of action even though the RSA gave it the right to withhold final approval of the releases and even while substantial volumes of evidence were collected by the Examiner (to which the SGC had full access). Incredibly, the Debtors continued to push the RSA settlements even beyond early

December 2015, when the Examiner provided CEOC and the SGC with his preliminary views of the merits and value of the estate causes of action.

14. At that time, it was beyond question that the SGC should have understood that the RSA settlements were substantially deficient and well outside of any appropriate range of reasonableness. Nevertheless, the Debtors (operating through a Special Restructuring Committee, consisting of the two SGC Directors and an Apollo director (ECF No. 4, at 47)) sought to protect the RSAs and the settlement at nearly every turn by, among other things, filing a motion to approve the RSAs, filing multiple flawed unsigned plans and disclosure statements, and seeking to begin a cramdown of those plans before the Examiner had concluded his work.

15. It remains uncertain whether the Debtors and SGC will, under the Plan, adopt the outcome of the Examiner's investigation, or instead ignore, minimize or reject the Examiner's conclusions as to the existence of potential claims and the amount of damages that can be obtained. What remains evident under the latest version of the Plan filed by the Debtors (with the endorsement of the SGC), even in its current incomplete form, is that the Debtors are once again are proposing to cramdown a settlement that would immunize CEC, the Sponsors and insiders and affiliates. Any settlement must account not only for the damages included in the Examiner's range based upon his independent assessment, but also for available damages and value resulting from lost profits, prejudgment interest, the value of CIE, the challenge to any "good faith" defense asserted by Caesars Growth Partners, the appreciation in value of the transferred assets, the impairment to Caesars Palace from the transfer of Octavius Tower, and the degradation to the properties owned by CEOC as a result of the transfers of CEOC's "crown jewels." (*See id.* at 39-43, 45, 47.)

III. RELIEF REQUESTED

16. The Noteholder Committee seeks entry of an order that grants the Noteholder Committee standing to pursue claims as set forth in the attached draft Complaint and claims based upon or arising out of the facts alleged therein.

IV. ARGUMENT

A. The Court Has Authority To Grant Standing To The Noteholder Committee.

17. The Bankruptcy Code provides for the establishment of official committees to protect the rights of creditors. *See* 11 U.S.C. § 1102. Creditor committees may “perform such other services as are in the interests of those represented,” *id.* § 1103(c)(5), and “may raise and may appear and be heard on any issue in a case under this chapter,” *id.* § 1109(b). This right to be heard would be hollow if a committee did not have the right to assert claims on behalf of the estate. *E.g., Official Comm. of Unsecured Creditors of Cybergenics Corp. ex rel. Cybergenics Corp. v. Chinery*, 330 F.3d 548 (3d Cir. 2003). Thus, bankruptcy courts are empowered to confer standing upon a committee in appropriate circumstances. *See Official Comm. of Unsecured Creditors of SGK Ventures, LLC v. NewKey Grp., LLC (In re SGK Ventures, LLC)*, 521 B.R. 842, 848 (Bankr. N.D. Ill. 2014) (“[T]he Seventh Circuit has repeatedly recognized the availability of derivative . . . standing.”).

18. In *In re Perkins*, 902 F.2d 1254 (7th Cir. 1990), the Seventh Circuit described the three predicates for committee standing: “(a) the [debtor in possession] unjustifiably refuses a demand to pursue the action; (b) the creditor establishes a colorable claim or cause of action; and (c) the creditor seeks and obtains leave from the bankruptcy court to prosecute the action for and in the name of the [debtor.]” 902 F.2d at 1258; *accord Fogel v. Zell*, 221 F.3d 955, 965 (7th Cir. 2000). As discussed in the following sections, each predicate exists here.

B. The Claims Are More Than “Colorable.”

19. A showing of colorability “is a relatively easy one to make.” *Adelphia Commc’ns Corp. v. Bank of Am., N.A. (In re Adelphia Commc’ns Corp.)*, 330 B.R. 364, 376 (Bankr. S.D.N.Y. 2005); *In re Midway Airlines, Inc.*, 167 B.R. 880, 884 (Bankr. N.D. Ill. 1994) (“A colorable claim (one seemingly valid and genuine) is not a difficult standard to meet.”). Authorization to bring claims derivatively “should be denied only if the claims are ‘facially defective.’” *Adelphia*, 330 B.R. at 376 (citation omitted).

20. Even without the benefit of the Examiner’s Report, the claims set forth in the draft Complaint would easily meet this standard, given the detailed allegations that CEOC, insolvent and under the control of CEC, made transfers for less than adequate consideration with the intent to hinder or delay CEOC’s creditors. “There is no basis for the principle . . . that the directors of an insolvent subsidiary can, with impunity, permit it to be plundered for the benefit of its parent corporation.” *Claybrook v. Morris (In re Scott Acquisition Corp.)*, 344 B.R. 283, 288 (Bankr. D. Del. 2006) (citation omitted)). Nor can there be dispute that the directors of CEC, the Sponsors, and others directed or otherwise knowingly participated in the looting of CEOC and in so doing breached fiduciary duties owed to CEOC or aided and abetted breaches of fiduciary duties by CEC’s and CEOC’s directors. *See CDX Liquidating Trust v. Venrock Assocs.*, 640 F.3d 209, 219-20 (7th Cir. 2011) (“[T]o aid and abet a breach of fiduciary duty committed by corporate directors is actionable under Delaware law.”).⁷

21. The claims are colorable, *a fortiori*, given the Examiner’s conclusions. After a comprehensive, year-long investigation in which the Examiner and his advisors reviewed over 8.8 million pages of documents and conducted 92 interviews, the Examiner issued a detailed

⁷ Notably, the Delaware Chancery Court, in an action raising many of the same claims against many of the same defendants, found the claims to be colorable. *See* Exhibits D-E.

Report finding that CEOC possesses claims “for constructive fraudulent transfers, actual fraudulent transfers (based on intent to hinder or delay creditors) and breaches of fiduciary duty by CEOC directors and officers and CEC.” (Rep. at 1.) The Examiner also found that claims for aiding and abetting breaches of fiduciary duty “exist against the Sponsors and certain of CEC’s directors.” (Rep. at 1.) The Examiner valued just the damages he quantified, on account of claims found to be “strong” or “reasonable,” in the range of \$3.6 billion and \$5.1 billion (Rep. at 80) and, as noted above, the Noteholder Committees believes that realistic recoveries are substantially greater than that.⁸

C. CEOC Has Not Litigated And Will Not Litigate The Claims.

22. Despite having long been on notice of the claims, CEOC has unjustifiably declined to prosecute the claims or allow others to do so. “A [debtor]’s decision to decline the pursuit of a colorable claim is only justified if there is a legal or practical impediment to prosecution.” *Home Casual LLC*, 534 B.R. at 354. Here, no such impediment exists. The claims are worth far more than \$5 billion (the Noteholder Committee estimates a range no less than \$8.1 billion to \$12.6 billion), the estate has the resources to pursue them, and the defendants have billions of dollars of assets from which recovery can be collected.

23. CEOC’s creation of the SGC does not alter this conclusion. A purportedly “independent” committee or board cannot refuse to pursue claims without valid justification.

⁸ The conclusions of an examiner have been found to be admissible as the conclusions of an expert under the Federal Rules of Evidence or, in at least one instance, as a public record. *E.g., In re FiberMark, Inc.*, 339 B.R. 321, 327 (Bankr. D. Vt. 2006) (examiner’s conclusions and opinions admissible under Federal Rule of Evidence 706); *Newby v. Enron Corp. (In re Enron Corp. Sec., Derivative & ERISA Litig.)*, 623 F. Supp. 2d 798, 824 & n.21 (S.D. Tex. 2009) (same); Hr’g Tr. at 20, 27, *In re Latshaw Drilling Co.*, No. 09-13572-R (DLR) (Bankr. N.D. Okla, Sep. 9, 2010) (ECF No. 374) (examiner’s report admissible under the public records exception to the hearsay rule, Federal Rule of Evidence 803(8), and examiner’s conclusions admissible as an expert opinion).

Moreover, the prior actions and inactions of the SGC make clear that the SGC Directors are in no position to make an independent, conflict-free assessment of the causes of action.

24. To begin, both of the SGC Directors were appointed by persons and entities who surely knew at the time that they would be defendants on the claims to be investigated by the SGC. Without question, persons chosen by potential defendants are not those most likely to thoroughly and vigorously pursue recoveries against their benefactors. “Indeed, if the involved directors expected any result other than a [decision not to litigate claims] at least as to them, they would probably never establish the committee.” *Joy v. North*, 692 F.2d 880, 888 (2d Cir. 1982).⁹

25. Moreover, not only were the SGC Directors appointed by the CEOC board, the Board can presumably remove them from the SGC at any time. This alone raises a reasonable doubt as to whether the SGC can act impartially. *See Del. Cty. Emps. Ret. Fund v. Sanchez*, 124 A.3d 1017, 1023 n.25 (Del. 2015) (“A lack of independence . . . turns on, at the pleading stage, whether the plaintiffs have pled facts from which the director’s ability to act impartially on a matter important to the interested party can be doubted because that director may feel . . . subject to the interested party’s dominion . . .”).

26. The SGC’s independence is further called into question by its conduct. For example, the SGC Directors abstained on the vote to authorize the filing by CEOC of a lawsuit that sought to wipe out the entirety of the estate claims for no consideration whatsoever. The SGC Directors then allowed the wholesale transfer of valuable employees and enterprise services to CEC affiliates in the Fall of 2014 which, according to the Debtors, now requires them to forgo any standalone plan involving litigation and instead to capitulate to the lousy deal offered by

⁹ This is especially true where, as here, the directors who appointed the SGC used the challenged transactions in an effort to exert leverage against the very creditors that would benefit from pursuit of the claims. (*E.g.*, Rep. at 66 (Mr. Bonderman told the Examiner that a benefit of the B-7 refinancing, and the resulting purported release of CEC’s parent guarantee of the Notes, “was that it increased the leverage on CEOC’s creditors”)).

CEC and the Sponsors. (ECF No. 3484, Ex. I.) The SGC did nothing to prevent those harmful acts despite its “sole authority and responsibility” to consider and approve matters involving material conflicts of interest. This abstention and passivity shows that the SGC is “incapable of making a decision with only the best interests of the corporation in mind.” *Oracle Corp. Derivative Litig.*, 824 A.2d at 920 (citation omitted); *see Booth Family Trust*, 640 F.3d at 145 (court allowed derivative suit to proceed where special committee member recused himself from considering claims against director, given “the mere appearance of the special litigation committee’s lack of independence”). Thereafter, the SGC allowed the Debtors to try to impede the Examiner by proposing severe constraints on the duration, cost, access (to privileged CEOC documents) and scope of the investigation, and to try to prevent the participation of the Committees in that investigation. (ECF No. 363, at 9-10; ECF No. 541, at 2.)

27. The SGC also did not engage independent counsel to represent it in its investigation of the conflicted insiders. “Both New York and Delaware law contemplate that a special litigation committee be represented by independent counsel.” *In re Par Pharm., Inc. Derivative Litig.*, 750 F. Supp. 641, 647 (S.D.N.Y. 1990); *In re Oracle Sec. Litig.*, 829 F. Supp. 1176, 1190 (N.D. Cal. 1993) (where a special settlement committee acted without the benefit of independent counsel, the “decision to settle and dismiss the derivative action simply does not satisfy the independence and good faith requirements of [Delaware law]”). Here, the SGC’s investigation was aided by CEOC’s own counsel (Kirkland & Ellis)—the same CEOC controlled by conflicted directors and the same firm that represented CEOC generally. Even worse, the Court found that the SGC’s financial consultant was tainted as a result of its failure to disclose the relationship between Mesirow’s principal who led the investigation and counsel for CEC.

28. Given that lack of independence, the SGC's "investigation" of the estate claims is not reliable, and its decision not to pursue them is not credible. Although the SGC concluded that fraudulent transfer claims existed against CEC, the Debtors originally proposed to settle them for billions of dollars less than the Examiner's *low* (and, as recognized by the Examiner, incomplete) estimate of their value. And the SGC failed to recommend any claims against CEOC's and CEC's directors, and instead, under the RSA, sought to release claims for no contribution. Moreover, the SGC failed to change its position despite the Examiner's collection of substantial evidence and information that plainly suggested that the SGC's preliminary conclusions were well off the mark. The SGC's willingness to forgo prosecution of immensely valuable causes of action is evidence of an inherent conflict of interest.¹⁰

D. Noteholder Committee Standing Will Generate \$280 Million For The Estate.

29. If granted standing, the Noteholder Committee will maximize the value of the estates in another way. As much as \$280 million of insurance coverage is unavailable if the claims remain in the hands of the Debtors, but available if the Noteholder Committee is authorized to pursue them. The policies at issue cover CEC, CEOC, and both entities' directors and officers as "insureds." Section 4B.(5) of the primary policy contains an "entity versus

¹⁰ Adding further to concerns about the SGC's independence are the longstanding affiliations that one of its two members (Steven Winograd) has with Apollo. *See* Rep. at 926-27 (describing ties between Winograd and Apollo); *Biondi v. Scrushy*, 820 A.2d 1148, 1156 (Del. Ch. 2003) ("If a special litigation committee is comprised of directors with compromising ties to the key officials who are suspected of malfeasance, . . . its ability to instill confidence is, at best, compromised . . ."). Although the Examiner found that certain of these ties, standing alone, were insufficient to rebut the presumption of the SGC's independence "in negotiating and approving the RSAs," the Examiner "[took] no position on what entity under applicable law should pursue any claims against related parties." (Rep. at 78 & n.106.) Indeed, when combined with the other circumstances and actions described above, these ties add to the perception that the SGC is not sufficiently independent to pursue or settle these claims. *See Booth Family Tr.*, 640 F.3d at 143 ("[I]n a special litigation committee case, there is no presumption of independence and the special litigation committee bears the burden of establishing its own independence by a yardstick that must be like Caesar's wife—above reproach.") (internal quotation marks and citations omitted).

insured” exclusion, which would bar coverage for claims brought by CEOC against another insured—including CEC and directors and officers of CEOC and CEC. (ECF No. 3439, Ex. A, at 10.) That exclusion applies even in a bankruptcy case if “the Claim is brought, controlled or materially assisted by . . . the resulting debtor-in-possession . . . of the debtor Organization or . . . any Executive of the foregoing.” (*Id.*) (emphasis omitted) By contrast, the exclusion does *not* apply to “any Claim brought by [a] . . . *creditors committee, bondholder committee, equity committee* or any other creditor or group of creditors” on behalf of the debtors’ estates. (*Id.* at 99) (emphasis added.) See *Cirka v. Nat’l Union Fire Ins.*, No. 20250-NC, 2004 Del. Ch. LEXIS 118, at *35 (Del. Ch. Aug. 6, 2004) (finding that a creditors’ committee, authorized by a bankruptcy court to sue derivatively, brings suit on behalf of the estate, not debtor in possession, and therefore does not trigger the Insured v. Insured Exclusion”). Thus, derivative standing will greatly increase the likelihood of a significant recovery by the estates.¹¹

V. CONCLUSION

For all the reasons above, the Noteholder Committee respectfully requests that the Court enter an order granting leave, standing and authority to the Noteholder Committee to commence, prosecute, and settle the causes of action on behalf of the Debtors’ estates.

¹¹ The Debtors may cite to the Court’s recent order to continue the UCC’s prior standing motion respecting claims against First Lien Parties (ECF No. 3403) as grounds to continue or deny the relief sought here. Previously, the Court concluded that the Debtors were justified, at least temporarily, in not pursuing such litigation because the Debtors were seeking confirmation of a Plan that, if approved, would resolve the claims to be pursued. (*Id.* at 11.) There, however, the settlement at issue was between the Debtors and the First Lien Parties—it was not a settlement among insider affiliates, but rather was negotiated at arms’ length. Here, for the same reason that the Debtors are incapable of prosecuting the claims against their insiders and affiliates, they are equally ill-equipped to negotiate and pursue settlement of those claims. Moreover, unlike before where the filing of the standing motion was sufficient to meet deadlines imposed by the Cash Collateral Orders (*id.* at 7), the claims set forth in the Complaint must be brought by no later than January 11, 2017 to ensure that they are properly preserved. 11 U.S.C. § 108(a).

Dated: May 13, 2016
Chicago, Illinois

Respectfully submitted,

/s/ Timothy W. Hoffmann

Timothy W. Hoffmann (No. 6289756)

JONES DAY

77 West Wacker Drive

Chicago, IL 60601

Telephone: (312) 782-3939

Facsimile: (312) 782-8585

thoffmann@jonesday.com

-and-

Bruce Bennett

James O. Johnston

Sidney P. Levinson

Joshua M. Mester

JONES DAY

555 South Flower Street

Fiftieth Floor

Los Angeles, California 90071

Telephone: (213) 489-3939

Facsimile: (213) 243-2539

*Counsel for the Official Committee of Second
Priority Noteholders*

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

<hr/>	
In re:)
	) Chapter 11
)
CAESARS ENTERTAINMENT OPERATING	) Case No. 15-01145 (ABG)
COMPANY, INC., et al., ¹)
)
Debtors.	) (Jointly Administered)
<hr/>	
CAESARS ENTERTAINMENT OPERATING	) Chapter 11
COMPANY, INC., et al.,)
	) Adversary Case. No. 15-00149 (ABG)
<i>Plaintiffs</i>)
vs.)
)
BOKF, N.A., WILMINGTON SAVINGS FUND	) Evidentiary Hearing Date: June 8,
SOCIETY, FSB, RELATIVE VALUE-	) 2016, at 10:30 a.m. (prevailing
LONG/SHORT DEBT PORTFOLIO, A SERIES	) Central Time)
OF UNDERLYING FUNDS TRUST, TRILOGY)
PORTFOLIO COMPANY, LLC, AND)
FREDERICK BARTON DANNER,)
)
)
)
<i>Defendants.</i>)
<hr/>	

**NOTICE OF DEBTORS' EMERGENCY MOTION FOR A TEMPORARY
RESTRAINING ORDER AND PRELIMINARY INJUNCTION ENJOINING
DEFENDANTS FROM FURTHER PROSECUTING THEIR GUARANTY LAWSUITS**

PLEASE TAKE NOTICE that on **June 8, 2016, at 10:30 a.m. (prevailing Central Time)** or as soon thereafter as counsel may be heard, the Debtors will appear before the Honorable A. Benjamin Goldgar or any other judge who may be sitting in his place and stead, in Courtroom 642 in the Everett McKinley Dirksen United States Courthouse, 219 South Dearborn Street, Chicago, Illinois 60604, for an evidentiary hearing on the attached *Debtors' Emergency*

¹ A complete list of the Debtors and the last four digits of their federal tax identification numbers may be obtained at <https://cases.primeclerk.com/CEOC>.

Motion for a Temporary Restraining Order and Preliminary Injunction Enjoining Defendants from Further Prosecuting Their Guaranty Lawsuits (the “Emergency Motion”).

PLEASE TAKE FURTHER NOTICE that copies of the Emergency Motion and all other documents filed in these chapter 11 cases are available free of charge by visiting <https://cases.primeclerk.com/CEOC> or by calling (855) 842-4123 within the United States or Canada or, outside of the United States or Canada, by calling +1 (646) 795-6969. You may also obtain copies of any pleadings by visiting the Court’s website at <http://www.ilnb.uscourts.gov> in accordance with the procedures and fees set forth therein.

Dated: June 6, 2016
Chicago, Illinois

/s/ David J. Zott, P.C.

James H.M. Sprayregen, P.C.

David R. Seligman, P.C.

David J. Zott, P.C.

Jeffrey J. Zeiger, P.C.

KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS INTERNATIONAL LLP

300 North LaSalle

Chicago, Illinois 60654

Telephone: (312) 862-2000

Facsimile: (312) 862-2200

- and -

Paul M. Basta, P.C.

Nicole L. Greenblatt, P.C.

KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS INTERNATIONAL LLP

601 Lexington Avenue

New York, New York 10022-4611

Telephone: (212) 446-4800

Facsimile: (212) 446-4900

Counsel to the Debtors and Debtors in Possession

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

<hr/>)
In re:		) Chapter 11
)
CAESARS ENTERTAINMENT OPERATING		) Case No. 15-01145 (ABG)
COMPANY, INC., et al., ¹)
)
Debtors.		) (Jointly Administered)
<hr/>)
CAESARS ENTERTAINMENT OPERATING		) Chapter 11
COMPANY, INC., et al.,)
		) Adversary Case. No. 15-00149 (ABG)
<i>Plaintiffs</i>)
vs.)
)
BOKF, N.A., WILMINGTON SAVINGS FUND		) Hearing Date: June 8, 2016, at 10:30 a.m.
SOCIETY, FSB, RELATIVE VALUE-		) (prevailing Central Time)
LONG/SHORT DEBT PORTFOLIO, A SERIES)
OF UNDERLYING FUNDS TRUST, TRILOGY)
PORTFOLIO COMPANY, LLC, AND)
FREDERICK BARTON DANNER,)
)
)
)
<i>Defendants.</i>)
<hr/>)

DEBTORS' EMERGENCY MOTION FOR A TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION ENJOINING DEFENDANTS
FROM FURTHER PROSECUTING THEIR GUARANTY LAWSUITS

¹ A complete list of the Debtors and the last four digits of their federal tax identification numbers may be obtained at <https://cases.primeclerk.com/CEOC>.

Pursuant to section 105(a) of the Bankruptcy Code and Rule 7065 of the Federal Rules of Bankruptcy Procedure, the Debtors respectfully request that the Court issue a temporary restraining order and preliminary injunction enjoining Defendants from continuing to prosecute guaranty lawsuits seeking billions of dollars from the Debtors' ultimate parent, Caesars Entertainment Corporation ("CEC"). As set forth below, the continued prosecution of these actions greatly endangers the Debtors' restructuring. In support thereof, the Debtors state as follows:

PRELIMINARY STATEMENT

1. In February 2016, this Court entered an injunction to allow the Debtors and their stakeholders a window of opportunity to try to reach a global settlement following the issuance of the Examiner report. With the help of a mediator, the Debtors have negotiated a materially enhanced contribution from CEC and its affiliates, and made substantial progress toward resolving what the Seventh Circuit has described as "an immense, and immensely complicated, bankruptcy proceeding." *Caesars Entm't Op. Co., Inc. v. BOKF, N.A. (In re Caesars Entm't Op. Co., Inc.)*, 808 F.3d 1186, 1187 (7th Cir. 2015).

2. The Debtors and CEC have now reached an agreement in principle under which CEC will support the Debtors' proposed reorganization plan (Dkt. 3832, and as amended from time to time, the "Plan"). The Plan is predicated on a \$4 billion (midpoint valuation) contribution from CEC and its affiliates. Negotiations with the Statutory Unsecured Claimholders' Committee ("UCC"), the ad hoc group of first lien bank lenders and first lien noteholders and the indenture trustee for the Debtors' subsidiary guaranteed unsecured notes have materially progressed. But one major roadblock to the Debtors' ability to pursue the Plan remains: two second lien indenture trustees and two groups of noteholders that claim to hold approximately \$125 million of senior unsecured notes are continuing to press guaranty lawsuits that seek to recover billions of dollars from CEC. Second lien indenture trustees Wilmington Savings Fund Society ("WSFS") and BOKF, N.A. are

prosecuting two of the suits while groups of senior unsecured noteholders represented by Frederick Barton Danner (“Danner”) and Trilogy Portfolio Company, LLC (“Trilogy”) are pursuing the other two actions (collectively, the “Guaranty Creditors”). Should the Guaranty Creditors prevail in their lawsuits, it will unravel the Plan the Debtors and their stakeholders have long been trying to achieve, bankrupt CEC, and return this restructuring to square one.

3. Rulings on dispositive summary judgment motions in each of the guaranty lawsuits are imminent. The Delaware Chancery Court could enter judgment against CEC as soon as June 16 on \$3.7 billion in claims being pursued by WSFS. The U.S. District Court for the Southern District of New York likewise could enter judgment between June 24 and July 22 on another \$7.7 billion in claims against CEC.² Absent injunctive relief, CEC could be hit with \$11.4 billion in adverse judgments by the end of this month.

4. This Court should enjoin the Guaranty Creditors from further prosecuting their guaranty suits until the Court issues its decision confirming or denying confirmation of the Debtors’ Plan. Given that rulings on dispositive motions are imminent, the Debtors respectfully request that the Court enter a temporary restraining order prohibiting the parties from proceeding with oral arguments scheduled for June 16 in Delaware and June 24 in New York to provide the Court time to determine whether to enter the preliminary injunction. This Court’s practical ability to prevent judgments from being entered in the guaranty suits may be diminished following oral argument. At that point, the parties will not need to take any additional steps themselves before a judgment may be

² Two other parties have brought actions against CEC seeking to enforce guaranties. In June 2015, UMB Bank, N.A., as trustee under certain CEOC first lien indentures, sued CEC in the Southern District of New York seeking \$6.345 billion. (105 Order at 5) In October 2015, Wilmington Trust, N.A., as successor trustee for the 10.75% Senior Unsecured Notes, sued CEC in the Southern District of New York seeking more than \$500 million. (*Id.* at 7) UMB and Wilmington Trust have agreed to abide by the terms of any injunction the Court issues. If the Court denies the Debtors’ motion, however, UMB and Wilmington Trust will continue to prosecute their guaranty lawsuits to ensure their interests are not prejudiced in a CEC bankruptcy.

entered. Thus, an injunction against these parties after oral arguments may not stop the courts from entering judgment. Either court also could rule on these motions at or immediately after argument.

5. As the Seventh Circuit previously held, the question for this Court is whether the injunctive relief sought by the Debtors is likely to enhance the prospects for a successful resolution of disputes attending their bankruptcy proceedings. For the reasons this Court previously enjoined trial of the BOKF lawsuit, the answer is plainly yes. The facts that entitle the Debtors to a temporary restraining order and preliminary injunction are straightforward and undisputed. The Debtors' Plan is predicated on a \$4 billion (midpoint valuation) contribution from CEC and its affiliates. As this Court previously found, CEC cannot both sustain adverse judgments in the guaranty litigation and make any meaningful contribution to the Debtors' restructuring. Without CEC's contribution, there is no Plan. Moreover, the Debtors are likely to successfully reorganize, at least if an injunction is issued. The Debtors' core business is strong, and the Debtors continue to make material progress in their Plan negotiations with critical creditor groups. (Indeed, assuming creditors have an opportunity to vote on the Plan, the Debtors believe there will be support even from certain second lien noteholders given that the most junior creditors will receive at least approximately 40 cent (midpoint valuation) recoveries if they vote for the Plan as a result of the enhanced contributions the Debtors negotiated from CEC and its affiliates.) Moreover, promoting successful reorganizations and settlements such as the one underlying the Plan is in the public interest. For these reasons, and as this Court has recognized, the Seventh Circuit "effectively endorsed" granting an injunction on this very theory earlier in these proceedings. (105 Order at 4)

6. The requested injunction will provide additional time for the mediator and the Debtors to try to bring the Guaranty Creditors on board to a fully consensual restructuring or, if such a restructuring cannot be achieved, to seek to confirm a Plan that will enjoy wide creditor support. If

the Court confirms the Plan, it will have found that the Plan and the settlement underlying it are in the best interests of the Debtors' bankruptcy estate. Should the Plan fail, the Guaranty Creditors can resume litigating against CEC. But the injunction will have served its purpose: to allow this Court to determine whether a Plan the Debtors and its stakeholders have been pursuing for nearly two years is in the best interests of the bankruptcy estate and should be confirmed. Creditors holding billions in claims should not face the risk that the guaranty litigation derails the Plan before the Court has a chance to review it.

BACKGROUND

7. The relevant facts are not in dispute. Many have already been decided by this Court, and other more recent facts are the proper subject of judicial notice.

I. CEC AND CEOC ANNOUNCE THAT CERTAIN TRANSACTIONS RELEASED CEC'S GUARANTIES OF CEOC'S OBLIGATIONS.

8. Before the leveraged buyout, CEOC issued \$1.5 billion in senior unsecured notes due in 2016 and 2017. (Order granting in part Debtors' motion for injunctive relief [Dkt. 214] ("105 Order") at 2) CEC guaranteed CEOC's obligations under these senior unsecured notes. (*Id.*) Currently, \$530 million of these notes remain outstanding, including approximately \$125 million held by noteholders purportedly represented by Defendants Danner and Trilogy. *Caesars Entm't Op. Co. v. BOKF, N.A.*, 533 B.R. 714, 721 n.7 (Bankr. N.D. Ill. 2015). The remaining outstanding notes are held by parties that are not challenging the release of the guaranties.

9. In 2009, CEOC issued \$3.71 billion in second priority secured notes due 2018. WSFS is a successor trustee under the indenture pursuant to which the notes were issued. (105 Order at 2) CEC also guaranteed CEOC's obligations under these notes. *BOKF*, 533 B.R. at 721. In 2010, CEOC issued \$750 million in second priority secured notes due 2018. *Id.* *BOKF, N.A.* is a

successor trustee under the indenture pursuant to which the notes were issued. *Id.* These obligations were also guaranteed by CEC. (105 Order at 2)

10. In May 2014, CEC and CEOC announced that CEC's guaranty of CEOC's debt was automatically released after CEC sold five percent of CEOC's outstanding common shares to institutional investors unaffiliated with CEC. (*See* CEC & CEOC 5/6/14 8-K)

11. In August 2014, CEC and CEOC announced they had reached an agreement to purchase notes from holders representing greater than 51 percent of each series of senior unsecured notes that were then held by non-affiliates of CEC and CEOC. With the consent of these noteholders, CEOC and the trustees amended the relevant indentures to remove CEC's guaranties of the senior unsecured notes. (*See* CEC 8/22/14 8-K)

II. CREDITORS FILE LAWSUITS CHALLENGING THE GUARANTY RELEASE.

12. On August 4, 2014, WSFS filed a lawsuit in Delaware Chancery Court against CEC and other defendants. (2014 WL 3885966) The lawsuit, as amended, alleges that CEC breached the WSFS indenture and violated the Trust Indenture Act ("TIA"), and requests a declaration that the guaranty is enforceable. (*Id.* at ¶¶ 128-154) If successful, WSFS would obtain a \$3.7 billion judgment against CEC. (105 Order at 2)

13. On September 3, 2014, Trilogy and other holders of 2016 senior unsecured notes filed suit in the Southern District of New York against CEC and CEOC. (14-cv-7091 (SAS) [Dkt. 1]) On October 2, 2014, Danner filed a class action in the Southern District of New York against CEC and CEOC on behalf of a purported class of 2016 noteholders. (14-cv-7973 (SAS) [Dkt. 1]) The Danner and Trilogy lawsuits allege that the August 2014 transaction breached the relevant indentures and the covenant of good faith and fair dealing, and violated the TIA. *BOKF*, 533 B.R. at 723-24. If successful, Danner and Trilogy collectively could obtain a judgment of approximately \$125 million against CEC. (105 Order at 2)

14. On March 3, 2015, BOKF filed a complaint against CEC in the Southern District of New York. (No. 15-cv-1561 (SAS) [Dkt. 1]) BOKF alleges CEC breached the indenture by failing to honor the guaranty, and asserts claims for intentional interference with contractual relations and breach of the duty of good faith and fair dealing. (*Id.* at ¶¶ 160-167, 177-195, 211-224) BOKF also seeks a declaration that the guaranty “has not been terminated or released and remains valid, binding and enforceable against CEC,” and any termination or release of the guaranty would violate the TIA. (*Id.* at ¶¶ 168-176, 196-210) If successful, BOKF would obtain a \$750 million judgment against CEC. (105 Order at 11)

III. JUDGMENTS ARE POTENTIALLY IMMINENT IN THE GUARANTY LITIGATION.

15. On March 18, 2016, WSFS filed a case-dispositive motion for summary judgment in Delaware Chancery Court. (2016 WL 1167641) On April 25, CEC filed its opposition brief and a cross-motion for partial summary judgment. (2016 WL 2610285) Both motions will be fully briefed by June 9 and oral argument is scheduled for June 16. (4/21/16 Order, Transaction ID No. 58893739) The Chancery Court has not indicated when it intends to rule on the summary judgment motions, but it will be in a position to do so at the end of the June 16th arguments.

16. The guaranty suits filed by Trilogy, Danner, BOKF and UMB were assigned to Judge Shira Scheindlin in the Southern District of New York. Before discovery was complete, Judge Scheindlin denied two rounds of summary judgment motions by BOKF and UMB as well as a summary judgment motion by Danner and Trilogy. (105 Order at 6) Judge Scheindlin set trial in the BOKF and UMB actions for March 14, 2016 and the Danner and Trilogy actions for May 9, 2016. (No. 14-cv-7973 [Dkt. 91]) In March 2016, however, Judge Scheindlin announced she was retiring and these lawsuits were reassigned to Judge Jed S. Rakoff. (*See, e.g.*, 3/31/16 minute entry [Dkt. 15-cv-1561]) At a status hearing on April 6, 2016, Judge Rakoff questioned whether any disputed

material issues of fact existed now that discovery was complete, and the parties agreed to another round of summary judgment briefing. On May 10, BOKF, Danner, and Trilogy (as well as UMB and Wilmington Trust) filed case-dispositive motions for summary judgment.³ CEC also filed cross-motions for summary judgment. All motions will be fully briefed by June 14 and oral argument is scheduled for June 24. Judge Rakoff has indicated that he will issue a ruling no later than July 22 and have a trial on any remaining claims commencing on August 22. (4/6/16 Tr. at 41) Judge Rakoff exhibited initial skepticism as to whether the guaranties had been released, suggesting that a disjunctive reading of the relevant indenture provision—which “works out to ‘and’ being ‘or’”—is “an extraordinary proposition.” (*Id.* at 11)

IV. THIS COURT PREVIOUSLY ENJOINED GUARANTY LITIGATION.

17. On March 11, 2015, the Debtors filed an adversary complaint and motion seeking injunctive relief under section 105(a) to temporarily halt the prosecution of actions brought by the Guaranty Creditors. (*See* Adv. 15-00149) The Debtors contended that the guaranty actions threatened their ability to reorganize because CEC could not make a meaningful contribution to the Debtors’ restructuring *and* pay multi-billion dollar judgments to the Guaranty Creditors. In June 2015, the Court held a two-day evidentiary hearing. On July 22, 2015, the Court denied the Debtors’ motion on the grounds that relief was only appropriate where the action the Debtors sought to enjoin against a third party arises from the same acts as Debtors’ claims against the third party. *BOKF*, 533 B.R. at 714. After the District Court affirmed, the Seventh Circuit reversed. *BOKF*, 808 F.3d at 1191. Following remand, on February 26, 2016, the Court granted the Debtors’ request to enjoin the BOKF trial, and continued their request with respect to the other guaranty lawsuits. The Court found the “evidence adduced at the [June 2015] hearing, as well as events post-hearing, demonstrated that

³ 15-cv-1561 [Dkt. 146]; 15-cv-04634 [Dkt. 148]; 14-cv-7973 [Dkt. 122]; 15-cv-8280 [Dkt. 33]; 14-cv-7091 [Dkt 142]

an injunction is likely to enhance the prospects for a successful reorganization, an injunction will serve the public interest, and the equities weigh in the debtors' favor.” (105 Order at 9) The Court also held that “[t]he guaranty creditors are competing directly with the estate for the same assets.” (*Id.* at 15) The BOKF injunction expired by its terms on May 9. (*Id.* at 18)

18. On May 4, the Court held a status on the Debtors' request to enjoin the WSFS, Danner, and Trilogy actions. Because there was no threat of an imminent judgment in these matters, the Debtors had not reached an agreement in principle with CEC on an enhanced contribution, and more progress in creditor negotiations was needed, the Debtors did not ask the Court to extend the existing injunction. The Court instead carried the matter for status to the disclosure statement hearing. (5/4/16 Tr. at 3-4)

V. THE PRIOR INJUNCTION ALLOWED THE DEBTORS TO MATERIALLY ADVANCE CREDITOR NEGOTIATIONS AND INCREASE CEC'S CONTRIBUTION.

19. The injunction the Court issued on February 26 provided the parties with a critical window in which to advance Plan negotiations toward a consensual plan. The parties used the time effectively. CEC has agreed to increase its contribution from an approximately \$1.5 billion minimum contribution to one with a midpoint valuation of \$4 billion. In exchange for its contribution, the CEC Released Parties (as defined in Plan) will receive releases of all of the Debtors' claims and certain claims held by third parties against them, including claims held by the Guaranty Creditors.

20. The Debtors have also made substantial progress in their negotiations with the UCC, the ad hoc committees representing the first lien bank lenders and first lien notes, and the trustee for the subsidiary-guaranteed notes. Together, these constituencies hold approximately \$12.6 billion of the Debtors' \$18 billion in debt. (*See* Disclosure Statement [Dkt. 3834-1] at 11-12)

21. As this Court previously found, CEC cannot both sustain adverse judgments in the guaranty litigation and make any meaningful contribution to the Debtors' restructuring. (105 Order at 11) As of January 2015, CEC had a market capitalization of \$1.8 billion and an enterprise value of roughly \$3 billion, including not quite \$400 million in cash. (*Id.*) Since then, CEC's ability to withstand adverse judgments has diminished; as of March 31, 2016, CEC only had \$218 million in cash (of which \$96 million was held by insurance captives). (5/5/16 CEC 10-Q at 10) If successful, the Guaranty Creditors will obtain judgments exceeding \$11 billion against CEC as soon as the end of this month. Judgments of this magnitude would "deprive CEC of assets needed to satisfy the estate's claims and rule out any contribution to the plan," and "CEC would end up in a bankruptcy case of its own." (*Id.*) This would lead to "one of the great messes of our time." (*Id.* at 17)

ARGUMENT

22. There is no question the Court has jurisdiction to enjoin Defendants from proceeding in the guaranty litigation. *BOKF*, 808 F.3d at 1188. It also has the statutory authority to enter the requested injunctive relief. Section 105 grants bankruptcy courts "extensive equitable powers ... to perform their statutory duties." *Id.* It provides that "the [bankruptcy] court may issue *any* order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a) (emphasis added).

23. As this Court previously found, it is not necessary to satisfy the traditional elements for injunctive relief to obtain a section 105(a) injunction. (105 Order at 9, citing *Fisher v. Apostolou*, 155 F.3d 876, 882 (7th Cir. 1998)) As long as the third-party litigation would defeat or impair the bankruptcy court's jurisdiction over the case before it, the debtor need only show (1) there is a likelihood of success on the merits, which in this context means likelihood of a successful reorganization, and (2) the injunction would serve the public interest. (105 Order at 9-10) The debtor need not show irreparable harm or inadequate remedy at law. (*Id.*)

I. THIS REMAINS A TEXTBOOK CASE FOR INJUNCTIVE RELIEF.

24. The critical question before this Court is whether a temporary injunction “is likely to enhance the prospects for a successful *resolution of the disputes* attending [the CEOC] bankruptcy.” *BOKF*, 808 F.3d at 1188 (emphasis added). The answer is plainly yes. The Debtors have a Plan that, if approved by the Court, will provide substantial recovery to creditors and resolve what has been a contentious and difficult reorganization. This Plan is only possible because CEC and its affiliates are making a \$4 billion contribution. This contribution, however, is at risk because of imminent potential multi-billion dollar judgments in the guaranty litigation.

25. For this reason, the Seventh Circuit previously recognized that the Debtors have a “direct and substantial interest” in the guaranty litigation that “would be furthered by a temporary injunction staying the lenders’ lawsuits against CEC.” *Id.* at 1189. It reasoned:

If before CEOC’s bankruptcy is wound up CEC is drained of capital by the lenders’ suits to enforce the guaranties that CEC had given them, there will be that much less money for CEOC’s creditors to recover in the bankruptcy proceeding. CEOC seeks on behalf of the creditors to recover from CEC assets that CEC caused to be fraudulently transferred to it from CEOC, and to use the recovered assets to pay the creditors. The less capital CEC has for CEOC to recapture through prosecution or settlement of its fraudulent-transfer claims, the less money its creditors will receive in the bankruptcy proceeding.

Id.

26. CEC is close to being “drained of capital” necessary to fund the Debtors’ restructuring. There are case dispositive summary judgment motions pending in each of the six guaranty lawsuits. As soon as June 16, the Delaware Chancery Court could issue a \$3.7 billion judgment against CEC. Between June 24 and July 22, the Southern District of New York could issue \$7.7 billion in judgments against CEC. There is no dispute that CEC cannot pay judgments of this magnitude. As this Court previously found, these judgments “would deprive CEC of the assets

needed to satisfy the estate's claims and rule out any CEC contribution to the plan"; instead, "CEC would end up in a bankruptcy case of its own." (105 Order at 11) That remains equally true today.

27. This Court twice has noted "these facts describe a 'textbook case' for a section 105(a) injunction." (105 Order at 11; *BOKF*, 533 B.R. at 732) For this reason, "bankruptcy courts often have enjoined litigation against a non-debtor, usually but not always a guarantor of the debtor's debts, who intends to contribute financially to the debtor's reorganization." (105 Order at 11, citing cases) This Court, of course, did so earlier in this case. (*Id.* at 18) Other courts in this district have done likewise. *See In re R&G Props*, No. 09-37463 (Bankr. N.D. Ill.) (Goldgar, J.), Feb. 3, 2010 Tr. 9:13-23 (issuing injunction where guarantors' ability to contribute "time and money, particularly money, [would] be jeopardized if the state actions proceed[ed]"); *Gander Partners LLC v. Harris Bank, N.A. (In re Gander Partners LLC)*, 432 B.R. 781, 788 (Bankr. N.D. Ill. 2010) ("If the lawsuits proceed their outcome could impair this court's jurisdiction to help the Debtors to reorganize as the source of funds to assist the reorganization would no longer be available.").

28. The undisputed facts show that this remains a textbook case as the requested injunctive relief is "likely to enhance the prospects for a successful resolution of disputes" attending this highly litigious bankruptcy. *BOKF*, 808 F.3d at 1188.

II. THE DEBTORS ARE LIKELY TO SUCCESSFULLY REORGANIZE.

29. The Debtors are likely to successfully reorganize, at least if an injunction is issued. There is no dispute the Debtors have a strong business. They have a highly valuable gaming franchise, with a signature hotel and casino, Caesars Palace Las Vegas, centrally located on the Las Vegas Strip. (105 Order at 10) The Debtors had more than \$5 billion in annual revenue and more than \$1 billion in EBITDA in the twelve months prior to the June 2015 evidentiary hearing. (*Id.*) This strong performance has continued post-petition. (*See, e.g.*, Disclosure Statement [Dkt. 3834-1] at 87 (the Debtors had \$4.54 billion in net revenue, \$610 million in income from operations and

substantial free cash flow after accounting for capital expenditures from the petition date through February 29, 2016)) The Debtors also have a Plan that is gaining widespread creditor support across the capital structure. The Debtors expect that support will grow in the days and weeks ahead.

III. AN INJUNCTION SERVES THE PUBLIC INTEREST.

30. The requested injunctive relief also serves the public interest. Both this Court and the Seventh Circuit recognized in their rulings on injunctive relief that successful reorganizations are in the public interest in the bankruptcy context because reorganizations preserve value for creditors and ultimately the public. (105 Order at 14, citing cases; *BOKF*, 808 F.3d at 1189) As the Court found several months ago, the Debtors have considerable value as a going concern and possess valuable claims against CEC. (105 Order at 14) The requested injunctive relief “will maintain the value of those claims (by protecting the CEC assets that would pay them)” while the Court decides whether to confirm the Plan and approve the settlement on which it is based. (*Id.*; *see also BOKF*, 808 F.3d at 1189 (the interest of all creditors in receiving more rather than less in the bankruptcy case “would be furthered by a temporary injunction staying the lenders’ lawsuits against CEC.”))

31. The other compelling public interest is in promoting settlements. (105 Order at 14, citing cases) The Seventh Circuit recognized that “successful resolution of disputes arising in bankruptcy proceedings is one of the Code’s central objectives.” *BOKF*, 808 F.3d at 1189. Public policy also favors settlements generally. *Nat’l Cas. Co. v. White Mountain Reins. Co.*, 735 F.3d 549, 556 (7th Cir. 2013). The Debtors’ Plan will resolve complex disputes among its stakeholders. The Debtors also expect the Plan to garner wide support of its creditors. They just need time to complete negotiations and seek confirmation. Under these circumstances, the public interests in successful reorganizations and settlements outweigh the Guaranty Creditors’ interests in enforcing their guaranties. (*See* 105 Order at 15)

IV. THE BALANCE OF EQUITIES WEIGHS IN THE DEBTORS' FAVOR.

32. The balance of the equities still heavily favors the Debtors. (105 Order at 15) As this Court noted, it is unclear whether this factor is even relevant as “neither of the Seventh Circuit decisions setting out the elements of a section 105(a) injunction mentions balancing the equities as one of them.” *BOKF*, 533 B.R. at 728 n.13. Given this silence and that there is no irreparable harm requirement, the Debtors do not believe the Court needs to reach this issue.

33. Regardless, the same factors that led the Court to conclude that the “balance of equities also heavily favors” the Debtors still apply. (105 Order at 15) The Debtors “stand to suffer very real harm” if an injunction is not granted. (*Id.*) If an injunction is not issued and the Guaranty Creditors obtain multi-billion dollar judgments against CEC, CEC will not be able to make a material financial contribution to the Debtors’ restructuring and instead will itself become a debtor. (*Id.*) If CEC files, the Debtors will have to pursue equitable remedies to obtain the return of assets transferred to CEC, which will result in an unrivaled “litigation forum” and massive administrative expenses. (*Id.* at 15-16) As the Debtors’ financial advisor testified, it would be “one of the great messes of our time.” (*Id.* at 16)

34. By comparison, the Guaranty Creditors will lose little if the Court grants the injunctive relief. The Debtors seek an injunction through plan confirmation. That injunction would allow more time for settlement discussions among the Debtors, CEC, and the Guaranty Creditors without the threat of imminent multi-billion dollar judgments and a CEC bankruptcy filing.

35. Absent settlement, the Guaranty Creditors will be able to argue at confirmation that the settlement underlying the Plan is not fair and reasonable. If they prevail, they can proceed with their guaranty claims against CEC. *See, e.g., Bank of the West v. Fabtech Indus., Inc. (In re Fabtech Indus. Inc.)*, 2010 WL 6452908, at *1-2, 6 (9th Cir. B.A.P. July 19, 2010) (affirming order enjoining creditor from enforcing guaranty against Debtor’s CEO through confirmation even though plan

precluded creditor from subsequently pursuing guaranty claims); *Otero Mills Inc. v. Security Bank & Trust (In re Otero Mills)*, 21 B.R. 777, 779 (Bankr. D. NM 1982) (entering permanent injunction to prevent creditor from pursuing judgment against guarantor to “allow the debtor an opportunity to present a plan and put it into operation” but allowing creditor to seek to lift injunction if “the debtor fails to file a plan within the required time or if the plan is not approved”). If the Court confirms the Plan over their objection, it will mean the Court has concluded that the Plan is fair and reasonable to all creditors—including the Guaranty Creditors. But this Court will never have the opportunity to assess whether the Plan, the culmination of nearly two years’ worth of efforts, is fair and reasonable if the injunction is not entered. Instead, CEC will be forced into bankruptcy and its \$4 billion contribution will go up in smoke. That result is directly contrary to both this Court’s and the Seventh Circuit’s rationale in recognizing the propriety of an injunction against the guaranty claims.

V. A TEMPORARY RESTRAINING ORDER TO PRESERVE THE STATUS QUO IS WARRANTED.

36. As set forth above, the Debtors have demonstrated each of the elements necessary to obtain a section 105(a) injunction. Nothing more is needed to obtain a temporary restraining order. A party does not need to show irreparable harm or inadequate remedy at law to obtain an injunction under section 105. (105 Order at 9-10, citing *Fisher*, 155 F.3d at 882) And the “standards for issuing temporary restraining orders are identical to the standards for preliminary injunctions.” *Long v. Bd. of Educ., Dist. 128*, 167 F. Supp. 2d 988, 990 (N.D. Ill. 2001) (citing *Bernina of America, Inc. v. Fashion Fabrics Int’l, Inc.*, 2001 WL 128164, at *1 (N.D. Ill. Feb. 9, 2001)). Thus, in the section 105 context, a court may issue a temporary restraining order without considering whether there is irreparable harm or an inadequate remedy at law. *In re Britestarr Homes, Inc.*, 368 B.R. 106, 108 (Bankr. D. Conn. 2007) (explaining “the usual grounds for injunctive relief ... such as irreparable

injury, need not be shown in a proceeding for an injunction under section 105(a),” and affirming entry of temporary restraining order to preserve status quo).

37. Even if irreparable harm and inadequate remedy at law were required, they are present here. As the Court previously found, the Debtors “stand to suffer very real harm” if an injunction is not granted and multi-billion dollar adverse judgments force CEC to file for bankruptcy. (105 Order at 15) As discussed, once oral arguments occur on June 16 in Delaware and June 24 in New York, this Court’s practical ability to prevent judgments from being entered in the guaranty suits may be diminished. The parties will not need to take any additional steps themselves before a judgment is entered and so an injunction against these parties may not stop the courts from entering judgment. Either court also could rule at or immediately after argument on these dispositive motions. Accordingly, the Court should enter a temporary restraining order to prevent the parties from proceeding with oral argument on these case dispositive motions while the Court considers the Debtors’ request for further injunctive relief.

CONCLUSION

38. Just three months ago, this Court entered an injunction “[b]ecause the debtors’ reorganization depends, one way or another, on the estate’s claims against CEC, because CEC does in fact ‘lack the money to satisfy all of its obligees,’ ... and because CEC will indeed be “drained of capital by the lenders’ suits to enforce the guaranties’ if those suits are not enjoined before adverse judgments are entered.” (105 Order at 14 (internal cites omitted)) The same threat again looms large. Summary judgment against CEC could be a pen stroke away, with devastating consequences for a Plan that will recover \$4 billion for the estate and provide substantial recoveries to creditors. In accordance with its and the Seventh Circuit’s prior rulings, the Court should exercise its extensive equitable powers to prevent the guaranty litigation from endangering the Debtors’ restructuring.

Dated: June 6, 2016
Chicago, Illinois

/s/ David J. Zott, P.C.

James H.M. Sprayregen, P.C.

David R. Seligman, P.C.

David J. Zott, P.C.

Jeffrey J. Zeiger, P.C.

KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS INTERNATIONAL LLP

300 North LaSalle

Chicago, Illinois 60654

Telephone: (312) 862-2000

Facsimile: (312) 862-2200

- and -

Paul M. Basta, P.C. (admitted *pro hac vice*)

Nicole L. Greenblatt, P.C. (admitted *pro hac vice*)

KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS INTERNATIONAL LLP

601 Lexington Avenue

New York, New York 10022-4611

Telephone: (212) 446-4800

Facsimile: (212) 446-4900

Counsel to the Debtors and Debtors in Possession

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Exhibit A

Proposed Order Granting Temporary Restraining Order

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:)	
	)	Chapter 11
)	
CAESARS ENTERTAINMENT OPERATING	)	Case No. 15-01145 (ABG)
COMPANY, INC., et al., ¹)	
)	
Debtors.	)	(Jointly Administered)
)	
)	
CAESARS ENTERTAINMENT OPERATING	)	Chapter 11
COMPANY, INC., et al.,)	
	)	Adversary Case. No. 15-00149 (ABG)
<i>Plaintiffs</i>)	
vs.)	
)	
BOKF, N.A., WILMINGTON SAVINGS FUND)	
SOCIETY, FSB, RELATIVE VALUE-)	
LONG/SHORT DEBT PORTFOLIO, A SERIES)	
OF UNDERLYING FUNDS TRUST, TRILOGY)	
PORTFOLIO COMPANY, LLC, AND)	
FREDERICK BARTON DANNER,)	
)	
)	
	)	Re: Docket Nos. _____
)	
<i>Defendants.</i>)	

**ORDER GRANTING DEBTORS' EMERGENCY MOTION FOR A TEMPORARY
RESTRAINING ORDER ENJOINING DEFENDANTS FROM FURTHER
PROSECUTING THEIR GUARANTY LAWSUITS**

¹ A complete list of the Debtors and the last four digits of their federal tax identification numbers may be obtained at <https://cases.primeclerk.com/CEOC>.

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”) granting Debtors’ emergency motion for a temporary restraining order enjoining Defendants from further prosecuting their guaranty lawsuits, all as more fully set forth in the Motion; and after due deliberation, it is HEREBY ORDERED THAT:

1. The Motion is granted.
2. Pursuant to section 105(a) of the Bankruptcy Code, pending further order of this Court, the Defendants are hereby temporarily enjoined from further prosecuting their guaranty lawsuits, styled: *Wilmington Savings Fund Society, FSB v. Caesars Entertainment Corp.*, C.A. No. 10004 VCG (Del. Ch.); *BOKF, N.A. v. Caesars Entertainment Corp.*, No. 15-cv-1561 (JSR) (SDNY); *Trilogy Portfolio Co., LLC v. Caesars Entertainment Corp.*, No. 14-cv-07091 (JSR) (SDNY); and *Danner v. Caesars Entertainment Corp.*, No. 14-cv-07093 (JSR) (SDNY).
3. A hearing on Debtors’ motion for a preliminary injunction is set for June ____, 2016 at _____ (prevailing Central Time).
4. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

Dated: _____, 2016
Chicago, Illinois

The Honorable A. Benjamin Goldgar
United States Bankruptcy Judge

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Application.

Exhibit B

Proposed Order Granting Preliminary Injunction

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:

CAESARS ENTERTAINMENT OPERATING
COMPANY, INC., et al.,³

Debtors.

Chapter 11

Case No. 15-01145 (ABG)

(Jointly Administered)

CAESARS ENTERTAINMENT OPERATING
COMPANY, INC., et al.,

Plaintiffs

VS.

BOKF, N.A., WILMINGTON SAVINGS FUND SOCIETY, FSB, RELATIVE VALUE-LONG/SHORT DEBT PORTFOLIO, A SERIES OF UNDERLYING FUNDS TRUST, TRILOGY PORTFOLIO COMPANY, LLC, AND FREDERICK BARTON DANNER,

Chapter 11

Adversary Case. No. 15-00149 (ABG)

Re: Docket Nos.

Defendants.

**ORDER GRANTING DEBTORS' EMERGENCY MOTION FOR
A PRELIMINARY INJUNCTION ENJOINING DEFENDANTS
FROM FURTHER PROSECUTING THEIR GUARANTY LAWSUITS**

³ A complete list of the Debtors and the last four digits of their federal tax identification numbers may be obtained at <https://cases.primeclerk.com/CEOC>.

Upon the motion (the “Motion”)⁴ of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”) granting Debtors’ emergency motion for a preliminary injunction enjoining Defendants from further prosecuting their guaranty lawsuits, all as more fully set forth in the Motion; and after due deliberation, it is HEREBY ORDERED THAT:

1. The Motion is granted.
2. Pursuant to section 105(a) of the Bankruptcy Code, the Defendants are hereby enjoined from further prosecuting their guaranty lawsuits, styled: *Wilmington Savings Fund Society, FSB v. Caesars Entertainment Corp.*, C.A. No. 10004 VCG (Del. Ch.); *BOKF, N.A. v. Caesars Entertainment Corp.*, No. 15-cv-1561 (JSR) (SDNY); *Trilogy Portfolio Co., LLC v. Caesars Entertainment Corp.*, No. 14-cv-07091 (JSR) (SDNY); and *Danner v. Caesars Entertainment Corp.*, No. 14-cv-07093 (JSR) (SDNY). The injunction will remain in place until the Court issues its decision confirming or denying confirmation of the Plan (as may be amended from time to time), or until further Order of the Court.
3. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

Dated: _____, 2016
Chicago, Illinois

The Honorable A. Benjamin Goldgar
United States Bankruptcy Judge

⁴ Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Application.

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:)	
	)	Chapter 11
)	
CAESARS ENTERTAINMENT OPERATING	)	Case No. 15-01145 (ABG)
COMPANY, INC., et al., ¹)	
)	
Debtors.	)	(Jointly Administered)
)	
)	
CAESARS ENTERTAINMENT OPERATING	)	Chapter 11
COMPANY, INC., et al.,)	
	)	Adversary Case. No. 15-00149 (ABG)
<i>Plaintiffs</i>)	
vs.)	
)	
BOKF, N.A., WILMINGTON SAVINGS FUND	)	Hearing Date: August 23, 2016 at 9:00 a.m.
SOCIETY, FSB, RELATIVE VALUE-	)	(prevailing Central Time)
LONG/SHORT DEBT PORTFOLIO, A SERIES)	
OF UNDERLYING FUNDS TRUST, TRILOGY)	
PORTFOLIO COMPANY, LLC, AND)	
FREDERICK BARTON DANNER,)	
)	
)	
)	
)	
<i>Defendants.</i>)	

NOTICE OF DEBTORS' MOTION TO EXTEND THE
SECTION 105 INJUNCTION ENJOINING DEFENDANTS
FROM FURTHER PROSECUTING THEIR GUARANTY LAWSUITS

PLEASE TAKE NOTICE that on **August 23, 2016, at 9:00 a.m. (prevailing Central Time)** or as soon thereafter as counsel may be heard, the Debtors will appear before the Honorable A. Benjamin Goldgar or any other judge who may be sitting in his place and stead, in Courtroom 642 in the Everett McKinley Dirksen United States Courthouse, 219 South Dearborn Street, Chicago, Illinois, 60604, for an evidentiary hearing on the attached *Debtors' Motion to*

¹ A complete list of the Debtors and the last four digits of their federal tax identification numbers may be obtained at <https://cases.primeclerk.com/CEOC>.

Extend the Section 105 Injunction Enjoining Defendants from Further Prosecuting Their Guaranty Lawsuits (the “Motion”).

PLEASE TAKE FURTHER NOTICE that written objections to the Motion are optional but if filed must be filed with the Court by **August 19, 2016**.

PLEASE TAKE FURTHER NOTICE that copies of the Motion as well as copies of all documents filed in these chapter 11 cases are available free of charge by visiting <https://cases.primeclerk.com/CEOC> or by calling (855) 842-4123 within the United States or Canada or, outside of the United States or Canada, by calling +1 (646) 795-6969. You may also obtain copies of any pleadings by visiting the Court’s website at <http://www.ilnb.uscourts.gov> in accordance with the procedures and fees set forth therein.

Dated: August 8, 2016
Chicago, Illinois

/s/ David J. Zott, P.C.

James H.M. Sprayregen, P.C.

David R. Seligman, P.C.

David J. Zott, P.C.

Jeffrey J. Zeiger, P.C.

KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS INTERNATIONAL LLP

300 North LaSalle

Chicago, Illinois 60654

Telephone: (312) 862-2000

Facsimile: (312) 862-2200

- and -

Paul M. Basta, P.C.

Nicole L. Greenblatt, P.C.

KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS INTERNATIONAL LLP

601 Lexington Avenue

New York, New York 10022-4611

Telephone: (212) 446-4800

Facsimile: (212) 446-4900

Counsel to the Debtors and Debtors in Possession

Pursuant to section 105(a) of the Bankruptcy Code and Rule 7065 of the Federal Rules of Bankruptcy Procedure, the Debtors respectfully request that the Court extend the injunction enjoining Defendants from further prosecuting guaranty lawsuits that seek billions of dollars from the Debtors' ultimate parent, Caesars Entertainment Corporation ("CEC"), until the first omnibus hearing after the Court issues its decision confirming or denying confirmation of the Debtors' plan of reorganization (the "Plan"). In support of their motion, the Debtors state as follows:

PRELIMINARY STATEMENT

1. The injunctions have served their intended purpose. Since the Court entered the first injunction, the Debtors have made substantial progress towards a fully consensual plan with numerous key stakeholders:

- **Subsidiary-Guaranteed Noteholders.** On April 26, the Debtors made a settlement offer to the subsidiary-guaranteed noteholders ("SGN"). On June 7, the Debtors entered into an RSA with certain of these noteholders. The RSA went effective on June 21, when holders of more than 65% of the subsidiary-guaranteed notes executed the RSA.
- **Caesars Entertainment Corporation.** On June 7, the Debtors entered into an RSA with CEC. The RSA committed CEC to support the Debtors' Plan and accelerated the timeline for CEC and Caesars Acquisition Company ("CAC") to enter into a merger agreement, which is an important source of funding for the Plan. On July 9, the CEC RSA went effective, and CEC and Hamlet Holdings LLC (the vehicle through which the sponsors hold their equity interests in CEC and CAC) ("Hamlet") entered into a Voting Agreement whereby Hamlet agreed, subject to certain terms and conditions, to vote its shares as a stockholder of CEC in support of the CEC-CAC merger.
- **Caesars Acquisition Company.** On June 12, the Debtors entered into an RSA with CAC that contained similar terms as the CEC RSA. On July 9, the CAC RSA went effective, and CAC and Hamlet entered into a Voting Agreement whereby Hamlet agreed, subject to certain terms and conditions, to vote its shares as a stockholder of CAC in support of the CEC-CAC merger.
- **First Lien Bank Lenders.** On June 20, the Debtors entered into an amended and restated RSA with certain holders of first lien bank debt, under which lenders holding more than 80% of first lien bank debt have committed to support the Debtors' Plan. The amended bank RSA became effective on June 21.
- **Statutory Unsecured Claimholders' Committee.** On June 22, the Debtors entered into an RSA with the Statutory Unsecured Claimholders' Committee (the "UCC"), pursuant

to which the UCC agreed to support the Debtors' Plan. The UCC RSA became effective on June 22.

- **Second Lien Noteholders.** On August 1, the Debtors entered into an RSA with holders of 27% of the second lien notes (the "Second Lien RSA"). When combined with the second lien notes held by parties subject to other RSAs, a total of 37% of the second lien noteholders now support the Debtors' restructuring. The Second Lien RSA, which will go effective if holders owning greater than 50.1% of notes issued under each of two indentures execute it, provides for enhanced recoveries of up to 55% to second lien noteholders that sign the Second Lien RSA (as compared to recoveries under the Plan of approximately 39% at the Debtors' midpoint valuation). As discussed below, the Debtors have continued to negotiate in mediation and otherwise with the Official Committee of Second Priority Noteholders (the "Noteholder Committee") and CEC using the Second Lien RSA as a framework to achieve further consensus.
- **First Lien Noteholders.** The Debtors are continuing to negotiate with the ad hoc committee of first lien noteholders to amend their existing RSA. Although the parties have not yet agreed on an amended RSA, the Plan provides for recoveries to the first lien noteholders of par plus substantial interest. Given these recoveries, the Debtors fully expect the first lien noteholders will continue to support the overall deal, and likewise support extending the injunction to allow the Debtors to pursue that deal.
- **Frederick Barton Danner.** The Debtors recently reached an agreement in principle with Frederick Barton Danner that is subject to final documentation, which the Debtors are working to complete promptly.

2. Much of this progress has occurred during the first 53 days of the 74-day injunction that the Court entered on June 15. Since then, the SGN, CEC and CAC RSAs all went effective, the Debtors entered into an amended RSA with the first lien bank lenders, and the Debtors entered into new RSAs with the UCC and certain second lien noteholders (all of which are effective except for the Second Lien RSA). The Debtors also reached an agreement in principle with Danner. In total, the Debtors estimate that \$14 billion of their \$18 billion capital structure currently supports the Debtors' proposed restructuring, which provides billions of dollars of recoveries for creditors and is premised on CEC's ability to make multi-billion dollar contributions under the Plan.

3. That leaves the Noteholder Committee (which includes Defendants WSFS and BOKF) and the Ad Hoc Group of 5.75% and 6.5% notes (which represents holders of \$23 million in claims, including Defendants Trilogy and Relative Value) as the sole remaining creditor groups that

oppose the Plan. The Debtors remain committed to achieving a fully consensual plan and are working hard to reach consensus with all parties. To that end, the Debtors are engaged in active dialogue with both of these groups.

4. Since the Court issued the injunction on June 15, the Debtors, CEC and its affiliates and the Noteholder Committee have participated in three in-person mediation sessions with Joseph J. Farnan, Jr., former Chief Judge of the U.S. District Court for the District of Delaware. A fourth session is scheduled for August 16. In addition, there have been frequent and extensive discussions among principals and advisors for the Debtors, CEC and its affiliates and the Noteholder Committee, as well as among principals and advisors for these parties and the mediator. The Ad Hoc Group of 5.75% and 6.5% notes also has participated in one of the in-person mediation sessions and is involved in additional discussions with the Debtors and CEC to try to resolve its claims.

5. The day after the first mediation session following entry of the current injunction, the Noteholder Committee publicly stated that holders of more than 50.1% in principal amount of second lien notes have agreed in writing to reject the Plan. The Debtors continued negotiations with second lien noteholders that are not on the Noteholder Committee, which led to the Second Lien RSA. The Second Lien RSA would provide \$900 million in additional creditor recoveries at the Debtors' midpoint valuation if all of the second lien noteholders agree to it. It also serves as a framework for additional negotiations with the Noteholder Committee in the ongoing mediation.

6. In addition, the Debtors have spent substantial time, both in and out of mediation, engaged in negotiations with the Noteholder Committee and other parties as a result of CAC's announcement on July 30 that it is selling its social mobile gaming business for \$4.4 billion in cash.³

³ The Debtors have litigation claims related to the assets that are being sold. Accordingly, the Debtors negotiated for, and CAC agreed to provide under the CAC RSA, 30-days' notice to the Debtors of the closing of the transaction. The Debtors have not yet received that notice. The

While this may allow the Debtors to distribute substantial additional cash rather than securities under the Plan and simplify certain valuation issues among the parties, there are significant ongoing negotiations regarding the allocation and use of these proceeds in addition to the negotiations regarding the amount of the ultimate creditor recoveries.

7. The Debtors also have outperformed their budget while in chapter 11. This too has led to further negotiations among the parties as to how to allocate this additional value.

8. All of these discussions and negotiations take time. The mediator continues to have almost daily discussions with the principals and advisors for the Debtors, CEC and its affiliates, and the remaining parties who have not signed RSAs. The mediator also has scheduled another in-person mediation session for August 16.

9. The Debtors are also attempting to eliminate other disputes so the parties can focus on mediation and confirmation. As previously indicated, the Debtors are working with counsel for the Noteholder Committee to finalize a comprehensive complaint to preserve the estate's claims. It will be filed this week. At that time and consistent with the Court's comments, the Debtors also will seek to continue the Noteholder Committee's standing motion, stay all remaining standing-specific discovery and stay any further litigation on the complaint. If the Court continues the standing motion, following more than a year and a half of disputes in a highly litigious bankruptcy, the parties will be able to focus their efforts on mediation and confirmation. This too is progress.

10. While the Debtors have made significant additional progress toward a fully consensual plan since the Court issued the most recent injunction and a fully consensual plan remains their overriding goal, relief under section 105 is not limited to injunctions that help parties

Debtors also negotiated for and CAC agreed to escrow under the CAC RSA the majority of the sale proceeds while the parties work through the impact of the sale on the chapter 11 process. In addition, the Debtors reserved their rights to seek to enjoin the closing.

achieve a fully consensual plan. Such a limitation would contradict the express grant of “extensive equitable powers” inherent in the terms of section 105, and resurrects the very “cramped interpretation” that the Seventh Circuit rejected. *Caesars Entm’t Operating Co. v. BOKF, N.A. (In re Caesars Entm’t Operating Co.)*, 808 F.3d 1186, 1188-89 (7th Cir. 2015). Indeed, it would effectively write section 105 out of the Bankruptcy Code as parties could only obtain injunctive relief when they do not need it—where there is a fully consensual restructuring.

11. Instead, as the Seventh Circuit previously held, the questions for this Court are whether extending the injunction is likely to enhance the prospects for a successful resolution of disputes attending these bankruptcy proceedings, and whether denying the injunction would thus endanger the success of the bankruptcy proceedings.

12. For the reasons the Court has previously found, the answers to these questions are plainly yes. The Debtors’ Plan is predicated on a \$4 billion (midpoint valuation) contribution from CEC and its affiliates. CEC cannot both sustain adverse judgments in the guaranty litigation and make any meaningful contribution to the Debtors’ restructuring. Without CEC’s contribution, there is no Plan. Moreover, the Debtors are likely to successfully reorganize, at least if an injunction is issued through confirmation. The Debtors’ core business is strong, and the Debtors continue to make material progress with their critical creditor groups. Finally, promoting successful reorganizations and settlements such as the one underlying the Plan is in the public interest.

13. The requested extension of the injunction will provide additional time for the mediator and the Debtors to try to bring the remaining creditors on board with a fully consensual restructuring or, if such a restructuring cannot be achieved, for the Debtors to seek to confirm a Plan that enjoys the support of all but two of the Debtors’ numerous creditor groups. Either way, the

injunction enhances the prospects for a successful resolution of disputes in this case. Disputes, after all, can be resolved through settlements or the courts.

14. An unfortunate byproduct of the Court's June injunction order is that it has vested the Noteholder Committee with undue negotiating leverage. The Committee's incentive is to *not* reach a settlement during the injunction period, since the Court has stated a further injunction is unlikely, and the prospect of imminent guaranty judgments means the Noteholder Committee will not have to face the risk of losing a contested Plan confirmation hearing. Negotiating balance can best be restored if all parties—including the Noteholder Committee, CEC and the sponsors, and the Debtors—know that, absent settlement, they face the risk of a contested confirmation hearing. As discovery progresses, and a confirmation trial approaches, pressure will steadily mount to reach a deal. This will restore both the “uncertainty” and the “deadlines” that the Court recognized have the best chance of achieving a fully consensual deal.

15. If the Court confirms the Plan, it will have found that the Plan and the settlement underlying it are fair and reasonable, and in the best interests of the Debtors' estates. Should the Plan fail, the guaranty plaintiffs can resume litigating against CEC. But the injunction will have served its purpose: to allow this Court to determine whether a Plan that the Debtors and its stakeholders have been pursuing for two years is in the best interests of the bankruptcy estate and should be confirmed. Creditors holding billions in claims should not face the risk that the guaranty litigation derails the Plan before the Court has a chance to review it.

BACKGROUND

I. THIS COURT TWICE PREVIOUSLY ENJOINED THE GUARANTY LITIGATION TO ALLOW THE DEBTORS TO MAKE SUBSTANTIAL PROGRESS ON A PLAN.

16. The Court previously has found the relevant background facts regarding CEC's guaranty of certain CEOC obligations, the release of the guaranty, and the lawsuits creditors filed in

response to the release of the guaranty. (*See, e.g.*, Order granting in part Debtors' motion for injunctive relief [Dkt. 214] ("Feb. 105 Order") at 2; *Caesars Entm't Operating Co. v. BOKF, N.A.* (*In re Caesars Entm't Operating Co.*), 533 B.R. 714, 721, 721 n.7 (Bankr. N.D. Ill. 2015))

17. On March 11, 2015, the Debtors filed a complaint and motion seeking injunctive relief under section 105(a) to temporarily halt the prosecution of actions brought by WSFS, BOKF, Danner and Trilogy (collectively, the "Guaranty Creditors"). (*See* Adv. 15-00149) Following a two-day evidentiary hearing, on July 22, 2015, the Court denied the Debtors' motion on the grounds that relief was only appropriate where the action the Debtors sought to enjoin against a third party arises from the same acts as Debtors' claims against the third party. *BOKF*, 533 B.R. at 727, 735. After the District Court affirmed, the Seventh Circuit reversed. *BOKF*, 808 F.3d at 1191.

18. Following remand, on February 26, 2016, the Court granted the Debtors' request to enjoin the BOKF trial. The Court found "[t]he evidence adduced at the [June 2015] hearing, as well as events post-hearing, demonstrated that an injunction is likely to enhance the prospects for a successful reorganization, an injunction will serve the public interest, and the equities weigh in the debtors' favor." (Feb. 105 Order at 9) The Court also held that "[t]he guaranty creditors are competing directly with the estate for the same assets." (*Id.* at 15) The BOKF injunction expired by its terms on May 9. (*Id.* at 18)

19. On June 6, 2016, after reaching an agreement in principle with CEC on an RSA and making significant progress with various creditor groups, the Debtors filed an emergency motion to again enjoin the guaranty litigation. [Dkt. 239] Following a three-day evidentiary hearing, the Court enjoined the guaranty plaintiffs from prosecuting their actions against CEC until the close of business on August 29, 2016. (Order Granting Mot. for TRO and Prelim. Inj. [Dkt. 274] ("June 105 Order") at 1) The Court found that an additional injunction is "likely to enhance the prospects for a

successful resolution of the disputes attending” the CEOC bankruptcy. (*Id.* at 4 (citing *BOKF*, 808 F.3d at 1188)) The Court warned, however, that the “chances of further injunctive relief are slim” and “encourage[d] the debtors and CEC to make good use of” the additional 74-day period. (*Id.* at 2, 5)

20. As set forth above, the Debtors have made substantial progress towards a fully consensual plan since the Court entered the initial injunction.

II. CEC FACES AN IMMINENT THREAT OF BILLIONS OF DOLLARS IN POTENTIAL GUARANTY JUDGMENTS.

21. There are fully briefed cross-motions for summary judgment pending in all six of the active guaranty actions. (June 105 Order at 1) Following entry of the injunction in June, Judge Jed S. Rakoff rescheduled argument on the motions pending before him for August 30 at 4 p.m. ET—the day after the current injunction expires. Oral argument in the Delaware Chancery Court has been rescheduled to September 13 at 1:30 p.m. Thus, absent further injunctive relief, \$11.4 billion in judgments could be entered against CEC by mid-September.

22. As this Court previously found, CEC cannot both sustain adverse judgments in the guaranty litigation and make any meaningful contribution to the Debtors’ restructuring. (Feb. 105 Order at 11) Should the Guaranty Creditors prevail, it will unravel the Plan that the Debtors and their stakeholders have long been trying to achieve, bankrupt CEC, and return this restructuring to square one.

ARGUMENT

23. The Court enjoined the Guaranty Creditors to “facilitate a negotiated resolution of the disputes in this case.” (June 105 Order at 5) As set forth above, the Debtors made material progress during the injunction periods. It is not clear, however, that the Debtors will be able to reach a fully consensual plan without reallocating some of the risk back to the Noteholder Committee. At this

point, the Noteholder Committee holds all of the cards in the negotiations given the Court's statements that future injunctive relief is unlikely, which mitigates the risk to the Noteholder Committee of ever facing a contested confirmation hearing. To be clear, no one wants a "cram down" confirmation hearing. The risks to the Debtors, CEC, the sponsors, and the Noteholder Committee are enormous in that scenario. But restoring balance to those risks by extending the injunction to Plan confirmation provides the best path to a fully consensual deal.

I. THE COURT HAS THE POWER TO ENJOIN THE GUARANTY LAWSUITS THROUGH PLAN CONFIRMATION.

24. The Seventh Circuit has described section 105 as a "broad grant of power" which "grants the extensive equitable powers that bankruptcy courts need to be able to perform their statutory duties." *BOKF*, 808 F.3d at 1188. Section 105 provides that "the [bankruptcy] court may issue *any* order ... that is necessary or appropriate to carry out the provisions of this title." *Id.* (citing 11 U.S.C. § 105(a)) (emphasis added by Seventh Circuit). Nothing in the text of the statute limits the Court's authority to issuing injunctions to facilitate fully consensual deals, and the Seventh Circuit has rejected a "cramped interpretation" of the scope of section 105. *Id.* at 1187-88. Indeed, other courts have enjoined creditors under section 105 from pursuing guaranty claims to allow a debtor to seek confirmation of its plan.

25. For example, in *Bank of the West v. Fabtech Indus., Inc. (In re Fabtech Indus., Inc.)*, 2010 WL 6452908 (9th Cir. B.A.P. July 19, 2010), the bankruptcy court enjoined a creditor under section 105 through the date of plan confirmation from continuing its state court action to enforce a guaranty against the debtor's CEO. *Id.* at 1. The creditor appealed on the grounds that the proposed plan would limit the creditor's ability to pursue its guaranty claim post-confirmation. *Id.* The appellate panel upheld the injunction, concluding it would allow the debtor's CEO to focus on confirming the debtor's plan without being distracted by the guaranty litigation. *Id.* at 5-6.

26. Similarly, in *Otero Mills, Inc. v. Sec. Bank & Trust (In re Otero Mills, Inc.)*, 21 B.R. 777 (Bankr. D.N.M. 1982), the court permanently enjoined a creditor under section 105 from enforcing a guaranty judgment against the debtor's president to "allow the debtor an opportunity to present a plan and put it into operation." *Id.* at 779. The creditor sought to foreclose on property that the debtor's president intended to sell to fund distributions to all creditors. *Id.* The court reasoned "the debtor is entitled to present a plan which should be considered by all creditors." *Id.*

27. Simply put, the Court's power under section 105 extends to entering an injunction that would allow the Debtors to seek confirmation of their Plan. To obtain such relief, the Debtors do not need to satisfy the traditional elements for an injunction. (Feb. 105 Order at 9, *citing Fisher v. Apostolou*, 155 F.3d 876, 882 (7th Cir. 1998)) As long as the third-party litigation would impair the bankruptcy court's jurisdiction over the case before it, the Court should extend the injunction if (1) there is a likelihood of success on the merits, which in this context means likelihood of a successful reorganization, and (2) the injunction would serve the public interest. (*Id.* at 9-10) The Debtors need not show irreparable harm or inadequate remedy at law. (*Id.*)

II. THIS REMAINS A TEXTBOOK CASE FOR AN INJUNCTION.

28. The critical questions before this Court are whether extending the injunction through Plan confirmation is "likely to enhance the prospects for a successful *resolution of the disputes* attending [the CEOC] bankruptcy" and whether "its denial will thus endanger the success of the bankruptcy proceedings." *BOKF*, 808 F.3d at 1188 (emphasis added). The answers are plainly yes. The Debtors have a Plan that, if approved by the Court, will provide substantial recoveries to creditors and resolve a highly contentious and "immense, and immensely complicated, bankruptcy proceeding." *Id.* at 1187. This Plan is only possible because CEC and its affiliates are making a \$4 billion contribution. This contribution, however, is at risk because of imminent potential multi-billion dollar judgments in the guaranty litigation.

29. For this reason, the Seventh Circuit previously recognized that the Debtors have a “direct and substantial interest” in the guaranty litigation that “would be furthered by a temporary injunction staying the lenders’ lawsuits against CEC.” *Id.* at 1189. It reasoned:

If before CEOC’s bankruptcy is wound up CEC is drained of capital by the lenders’ suits to enforce the guaranties that CEC had given them, there will be that much less money for CEOC’s creditors to recover in the bankruptcy proceeding. CEOC seeks on behalf of the creditors to recover from CEC assets that CEC caused to be fraudulently transferred to it from CEOC, and to use the recovered assets to pay the creditors. The less capital CEC has for CEOC to recapture through prosecution or settlement of its fraudulent-transfer claims, the less money its creditors will receive in the bankruptcy proceeding.

Id.

30. CEC is close to being “drained of capital” necessary to fund the Debtors’ restructuring. More than \$7.7 billion in judgments could be entered against CEC as soon as August 30 at 4 p.m., when Judge Rakoff has set argument on the cross motions in the five New York actions. The Delaware Chancery Court could issue a \$3.7 billion judgment against CEC by September 13. There is no dispute that CEC cannot pay judgments of this magnitude. As this Court previously found, these judgments “would deprive CEC of the assets needed to satisfy the estate’s claims and rule out any CEC contribution to the plan”; instead, “CEC would end up in a bankruptcy case of its own.” (Feb. 105 Order at 11) That remains true today.

31. Moreover, extending the injunction will enhance the prospects of a consensual deal by rebalancing the parties’ negotiating leverage or, absent a consensual deal, preserve CEC’s contribution that is the bedrock of any confirmable plan. Either way, the undisputed facts show this remains a textbook case as the requested injunctive relief is “likely to enhance the prospects for a successful resolution of the disputes” attending this highly litigious bankruptcy.

III. THE DEBTORS ARE LIKELY TO SUCCESSFULLY REORGANIZE.

32. The Debtors are likely to successfully reorganize, at least if the injunction is extended through confirmation. There is no dispute that the Debtors have a highly valuable gaming franchise. (Feb. 105 Order at 10) And they have outperformed their budget while in chapter 11. (June 105 Order at 4) As set forth above, the Debtors also enjoy widespread creditor support for their Plan.

33. To satisfy this element, the Debtors do not need to show it is likely they will achieve a fully consensual plan. *In re Excel Innovations, Inc.*, 502 F.3d 1086, 1097 (9th Cir. 2007) (“it is not a high burden to show a reasonable likelihood of success in reorganization”); *In re Lyondell Chem. Co.*, 402 B.R. 571, 589 (Bankr. S.D.N.Y. 2009) (only a reasonable likelihood of a successful reorganization is required). Indeed, one court found a debtor was likely to successfully reorganize where it had been in chapter 11 for seven years, competing plans had been filed, and the confirmation process was underway. *W.R. Grace & Co. v. Chakarian (In re W.R. Grace & Co.)*, 386 B.R. 17, 33 (Bankr. D. Del. 2008). Other courts have rejected attempts to limit what constitutes a “successful reorganization.” *Lyondell*, 402 B.R. at 590 (rejecting argument that probability of success requires 100% recoveries by unsecured creditors); *Matter of Chicago, Milwaukee, St. Paul & Pac. R. Co.*, 830 F.2d 758, 764 (7th Cir. 1987) (“A successful reorganization does not mean all creditors are therefore to be paid in full.”); *see also* Collier on Bankruptcy, 2-105 (“If reorganization is at risk due to litigation or other pressures brought to bear on nondebtors ... injunctions under section 105 are possible if the litigant can show likely success on the merits -- such as the likelihood of a plan of reorganization...”).

IV. EXTENDING THE INJUNCTION SERVES THE PUBLIC INTEREST.

34. The requested injunctive relief also serves the public interest. Both this Court and the Seventh Circuit recognized that successful reorganizations are in the public interest because they preserve value for creditors and ultimately the public. (Feb. 105 Order at 14; *BOKF*, 808 F.3d at

1189) As the Court found several months ago, the Debtors have considerable value as a going concern and possess valuable claims against CEC. (Feb. 105 Order at 14) The requested injunctive relief “will maintain the value of those claims (by protecting the CEC assets that would pay them)” while the Court decides whether to confirm the Plan and approve the settlement on which it is based. (*Id.*; *see also BOKF*, 808 F.3d at 1189)

35. The other compelling public interest is in promoting settlements. (Feb. 105 Order at 14, citing cases) The Seventh Circuit recognized that “successful resolution of disputes arising in bankruptcy proceedings is one of the Code’s central objectives.” *BOKF*, 808 F.3d at 1189. Public policy also favors settlements generally. *Nat’l Cas. Co. v. White Mountain Reins. Co.*, 735 F.3d 549, 556 (7th Cir. 2013). The Debtors’ Plan will resolve complex disputes among its stakeholders, and enjoys the wide support of the Debtors’ creditors. Under these circumstances, the public interests in successful reorganizations and settlements outweigh the Guaranty Creditors’ interests in enforcing their guaranties. (*See* Feb. 105 Order at 15)

V. THE BALANCE OF EQUITIES WEIGHS IN THE DEBTORS’ FAVOR.

36. The balance of the equities still heavily favors the Debtors. (Feb. 105 Order at 15) As this Court noted, it is unclear whether this factor is even relevant as “neither of the Seventh Circuit decisions setting out the elements of a section 105(a) injunction mentions balancing the equities as one of them.” *BOKF*, 533 B.R. at 728 n.13. Given this silence and that there is no irreparable harm requirement, the Debtors do not believe the Court needs to reach this issue.

37. Regardless, the same factors that led the Court to conclude that the “balance of equities also heavily favors” the Debtors still apply. (Feb. 105 Order at 15) The Debtors “stand to suffer very real harm” if an injunction is not extended. (*Id.*) As noted, if CEC loses the guaranty litigation, it will not be able to make a material financial contribution to the Debtors’ restructuring and instead will itself become a debtor. (*Id.*) If CEC files, the Debtors will have to pursue equitable

remedies to obtain the return of assets transferred to CEC, which will result in an unrivaled “litigation forum” and massive administrative expenses. (*Id.* at 15-16)

38. By comparison, the Guaranty Creditors will lose little if the Court extends the injunction. The Guaranty Creditors expressed concern that the Trust Indenture Act (“TIA”) may be amended during the injunction period. (June 105 Order at 5) But this is a risk that will exist for years regardless of whether the Court issues the injunction. Until all appeals are exhausted and a judgment becomes final, Congress may amend the TIA to impact the outcome of the guaranty lawsuits. *See Berning v. A.G. Edwards & Sons, Inc.*, 990 F.2d 272, 277 (7th Cir. 1993) (“Congress is free to change the law applicable to pending cases, even when ... the cases have left the trial courts and are being heard on appeal.”); *Georgia Ass’n of Retarded Citizens v. McDaniel*, 855 F.2d 805, 813 (11th Cir. 1988) (“When it so intends, [Congress’] ability to affect the content of a nonfinal judgment in a civil case, through retroactive legislation ceases only when a case’s journey through the courts comes to an end.”).

39. Extending the injunction through Plan confirmation would rebalance the leverage among the parties and allow more time for settlement discussions among the Debtors, CEC, the sponsors and the Noteholder Committee without the threat of imminent multi-billion dollar judgments and a CEC bankruptcy filing. If extended, the Debtors, CEC, the sponsors and the Noteholder Committee will *all* know that absent settlement, they face the looming risks inherent in a contested confirmation hearing. These risks will increase each day on each of these constituents as the confirmation hearing draws near. The length of the injunction, which would be in place through an early 2017 confirmation hearing, simply reflects the additional time the Noteholder Committee wanted to prepare for confirmation. But it also provides additional time for the mediation process to continue and succeed in averting what the Noteholder Committee has promised will be a

“monumental confirmation fight.” This will create the right mix of “uncertainty” and “deadlines” that the Court recognized have the best chance of getting to a fully consensual deal.

40. Absent settlement, the Guaranty Creditors will be able to argue at confirmation that the settlement underlying the Plan is not fair and reasonable. If they prevail, they can proceed with their claims against CEC. If the Court confirms the Plan over their objection, it will mean the Court has concluded that the Plan is fair and reasonable to all creditors—including the Guaranty Creditors.

41. But this Court will never have the opportunity to assess whether the Plan, the culmination of nearly two years’ worth of efforts, is fair and reasonable if the injunction is not extended. Instead, CEC will be forced into bankruptcy and its \$4 billion contribution will go up in smoke. That result is directly contrary to both this Court’s and the Seventh Circuit’s rationale in recognizing the propriety of an injunction against the guaranty claims.

CONCLUSION

42. The Debtors remain committed to achieving a fully consensual plan and are working hard to reach consensus among all parties. The Debtors have made good use of the 74-day injunction issued by the Court in June. But without an extension, the Debtors soon may be back at square one. In accordance with its and the Seventh Circuit’s prior rulings, the Court should exercise its extensive equitable powers to prevent the guaranty litigation from endangering the Debtors’ restructuring.

Dated: August 8, 2016
Chicago, Illinois

/s/ David J. Zott, P.C.

James H.M. Sprayregen, P.C.

David R. Seligman, P.C.

David J. Zott, P.C.

Jeffrey J. Zeiger, P.C.

KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS INTERNATIONAL LLP

300 North LaSalle

Chicago, Illinois 60654

Telephone: (312) 862-2000

Facsimile: (312) 862-2200

- and -

Paul M. Basta, P.C.

Nicole L. Greenblatt, P.C.

KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS INTERNATIONAL LLP

601 Lexington Avenue

New York, New York 10022-4611

Telephone: (212) 446-4800

Facsimile: (212) 446-4900

Counsel to the Debtors and Debtors in Possession

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Proposed Order Page 1 of 3

Exhibit A

Proposed Order

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:)	
	)	Chapter 11
CAESARS ENTERTAINMENT OPERATING)	
COMPANY, INC., et al., ¹	)	Case No. 15-01145 (ABG)
)	
Debtors.	)	(Jointly Administered)

CAESARS ENTERTAINMENT OPERATING)	
COMPANY, INC., et al.,	)	Chapter 11
)	
<i>Plaintiffs</i>	)	Adversary Case. No. 15-00149 (ABG)
vs.)	
)	
BOKF, N.A., WILMINGTON SAVINGS FUND)	
SOCIETY, FSB, RELATIVE VALUE-)	
LONG/SHORT DEBT PORTFOLIO, A SERIES)	
OF UNDERLYING FUNDS TRUST, TRILOGY)	
PORTFOLIO COMPANY, LLC, AND)	
FREDERICK BARTON DANNER,)	
)	
)	
)	
)	
<i>Defendants.</i>	)	Re: Docket No. ____

**ORDER GRANTING DEBTORS' MOTION TO EXTEND
THE SECTION 105 INJUNCTION ENJOINING DEFENDANTS
FROM FURTHER PROSECUTING THEIR GUARANTY LAWSUITS**

Upon the motion (the "Motion")² of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of an order (this "Order") enjoining the continued prosecution

¹ A complete list of the Debtors and the last four digits of their federal tax identification numbers may be obtained at <https://cases.primeclerk.com/CEOC>.

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

of four lawsuits in two federal and state courts between holders of the Debtors' second lien or unsecured debt (or trustees representing them) and Caesars Entertainment Corporation, all as more fully set forth in the Motion; and after due deliberation, it is HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. Pursuant to section 105(a) of the Bankruptcy Code, the Defendants are hereby enjoined from further prosecuting their guaranty lawsuits, styled: *Wilmington Savings Fund Society, FSB v. Caesars Entertainment Corp.*, C.A. No. 10004 VCG (Del. Ch.); *BOKF, N.A. v. Caesars Entertainment Corp.*, No. 15-cv-1561 (JSR) (SDNY); *Trilogy Portfolio Co., LLC v. Caesars Entertainment Corp.*, No. 14-cv-07091 (JSR) (SDNY); and *Danner v. Caesars Entertainment Corp.*, No. 14-cv-07093 (JSR) (SDNY). The injunction will remain in place until the first omnibus hearing after the Court issues its decision confirming or denying confirmation of the Plan (as may be amended from time to time), or until further order of the Court.
3. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

Dated: _____, 2016
Chicago, Illinois

The Honorable A. Benjamin Goldgar
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:

**CAESARS ENTERTAINMENT
OPERATING COMPANY, INC. *et al.*,**

Debtors.

)
) Chapter 11
)
) **Case No. 15-01145 (ABG)**
) (Jointly Administered)
)
) Hon. A. Benjamin Goldgar
)
)

FINAL REPORT OF EXAMINER, RICHARD J. DAVIS

March 15, 2016

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:

**CAESARS ENTERTAINMENT
OPERATING COMPANY, INC. *et al.*,**

Debtors.

)
) Chapter 11
)
) **Case No. 15-01145 (ABG)**
) (Jointly Administered)
)
) Hon. A. Benjamin Goldgar
)
)

FINAL REPORT OF EXAMINER, RICHARD J. DAVIS

March 15, 2016

VOLUME 1

(Introduction and Executive Summary)

SA298

INTRODUCTION

The Examiner investigated over fifteen sometimes related transactions between CEOC (the Debtor)¹ and other entities controlled by CEC (its parent) and the LBO Sponsors (Apollo and TPG). These transactions took place over a more than five-year period and continued through 2014. The principal question being investigated was whether in structuring and implementing these transactions assets were removed from CEOC to the detriment of CEOC and its creditors.

The simple answer to this question is “yes.” As a result, claims of varying strength arise out of these transactions for constructive fraudulent transfers, actual fraudulent transfers (based on intent to hinder or delay creditors) and breaches of fiduciary duty by CEOC directors and officers and CEC. Aiding and abetting breach of fiduciary duty claims, again of varying strength, exist against the Sponsors and certain of CEC’s directors.² None of these claims involve criminal or common law fraud.

The potential damages from those claims considered reasonable or strong³ range from \$3.6 billion to \$5.1 billion. Monetary damages are the most common remedy in fraudulent transfer cases, but in certain cases the Court could require that the property that was subject to transfer be returned to CEOC, particularly where damages are difficult to calculate.⁴ In addition, one uncertainty of potentially significant magnitude is the ability of CEOC to recover all or some of the value of the social gaming business of CIE, an entity created in 2009 in connection with the transfer of the World Series of Poker trademark (WSOP) out of CEOC. A potential recovery of these damages is not included in the above numbers. Also excluded from the above numbers

¹ References to CEOC or the Debtor should be read to include debtor subsidiaries and affiliates.

² In reaching these conclusions the Examiner is not opining on regulatory issues in any jurisdiction or whether any regulatory inquiries are appropriate. Indeed, his findings are largely based on bankruptcy related issues where the issues do not necessarily correspond to regulatory requirements. For example, as discussed below, conduct which might involve no claims if CEOC was solvent become the basis for claims in large part because CEOC was insolvent. Neither the allegations investigated nor conduct giving rise to claims set forth in this Report had any adverse impact on the day-to-day operation of the casinos. Moreover, none of these findings apply or to purely operational executives (*e.g.*, John Payne, the current CEO of CEOC) who played no material role in the transactions at issue.

³ Claims are being characterized as strong (a claim having a high likelihood of success), reasonable (a claim having a reasonable, or better than 50/50, chance of success), plausible (a claim likely to survive a motion to dismiss but having less than a 50/50 chance of success), weak (a claim with a reasonable chance of surviving a motion to dismiss but unlikely to succeed) or not viable (either likely to be dismissed on motion or highly unlikely to succeed if litigated).

⁴ If the transferee cannot establish its good faith, the transferee will only be entitled to an unsecured claim for the amount of the consideration it paid. Where good faith is not established and monetary damages are awarded, the damage award thus would be based on the value of the asset transferred and the transferee would not be entitled to an offset in the amount of the consideration.

are (i) lost profits or other appreciation in the value of properties transferred, and related potential liens or offsets to which good faith transferees may be entitled in connection with such increases in value, and (ii) interest. While the various claims discussed in this Report exist, and the Examiner believes many of them are reasonable or strong, it is clear that they will be vigorously contested by the affected parties and all of them thus are subject to litigation risk.

As to constructive fraudulent transfer claims, one defense involves the so-called safe-harbor provisions for securities transactions under section 546(e) of the Bankruptcy Code. The Examiner believes that a court will not find these provisions applicable to the facts surrounding the asset transfers at issue.⁵ Nonetheless, this is a complex issue which, like others, will be the subject of intense litigation. At the same time, the availability of this defense likely will not impact the overall quantum of potential damages since it is not applicable to either breach of fiduciary duty or actual fraudulent transfer claims which also arise from these transactions, and which involve the same or similar damages (albeit in the case of breach of fiduciary duty against different parties).

Central to these claims is the fact that throughout this period CEC and the Sponsors treated CEOC as if it was a solvent 100% owned subsidiary when the reality, confirmed in much of the contemporaneous analyses they themselves created, was very different. By December 31, 2008, and continuing through 2014, there is a strong case that CEOC was insolvent, and from the last quarter of 2013 through 2014 (when the most significant transactions took place) it was certainly insolvent. Moreover, precisely because of CEOC's very problematic financial condition, by sometime in late 2012 the Sponsors adopted and began to implement a strategy, which while providing some benefit to CEOC, was designed, among other things, to strengthen CEC's and the Sponsors' position in a potential restructuring negotiation with creditors and improve their position in the event of a CEC or CEOC bankruptcy. Indeed, by the Fall of 2013, while hoping to avoid a CEOC bankruptcy, the Sponsors began planning for what would happen in the event of such a bankruptcy. A consequence of CEOC's insolvency was that CEOC should have had independent directors and advisors in connection with these transactions, but that did not occur until late June 2014.

In assessing the actions of CEC and the Sponsors, it is important to remember that the Sponsors are among the most financially savvy investors in the country, and both TPG and Apollo have extensive experience in dealing with financially troubled companies. This expertise was applied in connection with their investment in Caesars and, indeed, during the relevant period Apollo was the *de facto* chief financial officer of CEOC. In the transactions at issue, the Chief Executive Officer of CEC and CEOC and other senior management also deferred to the Sponsors on key issues, including the selection of which CEOC properties should be sold to

⁵ Principally, the asset transactions that were undertaken here involved sales or transfers of intellectual property interests or membership interests in limited liability companies, and thus do not qualify as "settlement payments" or as transfers made "in connection with a securities contract," as required under section 546(e). Nor do such transfers appear to have been made, in most instances, "by or through (or for the benefit of)" a "financial participant" (as that term is defined in the Bankruptcy Code). Section 546(e) does, however, provide a defense to a number of the financial transactions that were investigated.

other affiliated companies controlled by CEC and the Sponsors. Indeed, it appears that the Sponsors' past success in successfully negotiating resolutions involving financially troubled companies was a factor in their assuming they could do so here without the need to pay adequate attention to the requirements associated with being fiduciaries of an insolvent entity.

Analysis of the solvency of CEOC and the valuation of assets transferred in connection with the transactions that were investigated are central to the conclusions in this Report. Since it therefore is important for everyone to have a clear understanding of the underlying analyses relied on by the Examiner, the main body of the report contains an extensive discussion of these subjects. Moreover, Appendix 7 provides a detailed explanation of how the Examiner arrived at his conclusions about both the value of the assets transferred and his disagreements with the opinions provided in connection with these transactions by various financial advisors.

In reaching these conclusions the Examiner and his Advisors reviewed over 8.8 million pages of documents and conducted interviews of 92 individuals, with some individuals being interviewed on multiple occasions.⁶ The interviews of 74 individuals were transcribed. Of great value to the Examiner also was the input – both at meetings and through written presentations – received from various key parties, including CEC, the Sponsors, the two Official Committees, CAC and the Ad Hoc Committees of First Lien Note Holders and First Lien Bank Debt, and their advisors. Some of this input was through frequent interaction between the Examiner's professionals and those retained by these groups. The Examiner also, however, met personally with these constituencies on multiple occasions. In late 2015 he also made detailed presentations of his preliminary views to each of these groups so that he could receive their further input. In response he had follow-up meetings with key interested parties, and received extensive written and oral submissions on a wide range of factual and legal issues. The Examiner found this process to be extremely helpful in assisting him in understanding and analyzing the critical issues being investigated. At the same time, the extensive presentations received from interested parties, as well as the volume and delays in the production of documents, undoubtedly lengthened the investigative process.

⁶ One reason individuals had to be interviewed a second time was that document production took far longer than expected.

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

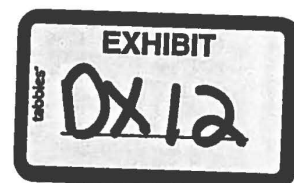
CAESARS ENTERTAINMENT OPERATING COMPANY, INC.; CAESARS LICENSE COMPANY, LLC; OCTAVIUS LINQ HOLDING CO., LLC; PHW LAS VEGAS, LLC; CAESARS BALTIMORE ACQUISITION COMPANY, LLC; PHW MANAGER, LLC; CAESARS BALTIMORE MANAGEMENT COMPANY, LLC; 3535 LV CORP; 3535 LV PARENT, LLC; CORNER INVESTMENT COMPANY NEWCO, LLC; JCC HOLDING COMPANY II NEWCO, LLC; PARBALL CORPORATION; PARBALL PARENT, LLC; CROMWELL MANAGER, LLC; BALLY'S LAS VEGAS MANAGER, LLC; THE QUAD MANAGER, LLC; FHR CORPORATION; FHR PARENT, LLC; LVH CORPORATION; LVH PARENT, LLC; FLAMINGO-LAUGHLIN, INC; FLAMINGO-LAUGHLIN PARENT, LLC; DCH EXCHANGE LLC; LAS VEGAS RESORT DEVELOPMENT INC.; WINNICK HOLDINGS LLC; and TRB FLAMINGO LLC,

Plaintiffs,

vs.

CAESARS ENTERTAINMENT CORPORATION; CAESARS ACQUISITION COMPANY; CAESARS GROWTH PARTNERS, LLC; CAESARS ENTERTAINMENT RESORT PROPERTIES, LLC; CAESARS ENTERPRISE SERVICES, LLC; CAESARS INTERACTIVE ENTERTAINMENT, INC.; APOLLO GLOBAL MANAGEMENT, LLC; TPG CAPITAL, LP; HAMLET HOLDINGS LLC; TPG HAMLET HOLDINGS, LLC; TPG HAMLET HOLDINGS B, LLC; APOLLO HAMLET HOLDINGS, LLC; APOLLO HAMLET HOLDINGS B, LLC; CO-INVEST HAMLET HOLDINGS, SERIES LLC; CO-INVEST HAMLET HOLDINGS B, LLC; JEFFREY BENJAMIN; DAVID BONDERMAN; KELVIN L. DAVIS; JEFFREY HOUSENBOLD; FRED J. KLEISNER; GARY W. LOVEMAN; KARL PETERSON; ERIC PRESS; MARC C. ROWAN; DAVID B. SAMBUR; LYNN SWANN; CHRISTOPHER WILLIAMS; CHATHAM ASSET MANAGEMENT LLC; 3535 LV NEWCO, LLC;

Adv. Proc. No. 16-_____



BALLY'S LV, LLC; CAESARS GROWTH BALLY'S LV, LLC; CAESARS GROWTH BALTIMORE FEE, LLC; CAESARS GROWTH CROMWELL, LLC; CAESARS GROWTH HARRAH'S NEW ORLEANS, LLC; CAESARS GROWTH LAUNDRY, LLC; CAESARS GROWTH PH, LLC; CAESARS GROWTH PH FEE, LLC; CAESARS GROWTH QUAD, LLC; CAESARS LINQ, LLC; CAESARS TOURNAMENT, LLC; CORNER INVESTMENT COMPANY, LLC; FLAMINGO CERP MANAGER, LLC; FLAMINGO LAS VEGAS OPERATING COMPANY, LLC; FLAMINGO LAS VEGAS PROPCO, LLC; HAC CERP MANAGER, LLC; HARRAH'S ATLANTIC CITY OPERATING COMPANY LLC; HARRAH'S ATLANTIC CITY PROPCO, LLC; HARRAH'S LAS VEGAS, LLC; HARRAH'S LAS VEGAS PROPCO, LLC; HARRAH'S LAUGHLIN PROPCO, LLC; HARRAH'S LAUGHLIN, LLC; HIE HOLDINGS, INC.; HIE HOLDINGS TOPCO, INC.; HLV CERP MANAGER, LLC; LAUGHLIN CERP MANAGER, LLC; PARBALL NEWCO, LLC; PARIS CERP MANAGER, LLC; PARIS LAS VEGAS OPERATING COMPANY, LLC; PARIS LAS VEGAS PROPCO, LLC; PHWLTV, LLC; RIO CERP MANAGER, LLC; RIO PROPCO, LLC; RIO PROPERTIES, LLC; JAZZ CASINO COMPANY, LLC; LAUNDRY NEWCO, LLC; LVH NEWCO, LLC; FLAMINGO-LAUGHLIN NEWCO, LLC; AND FHR NEWCO, LLC,

Defendants.

ADVERSARY COMPLAINT

Plaintiffs Caesars Entertainment Operating Company, Inc. ("CEOC") and certain of its debtor subsidiaries bring this Adversary Complaint, on information and belief where applicable, against CEOC's controlling shareholder, Caesars Entertainment Corporation ("CEC"); several of CEOC's present and past directors and officers; several of CEC's present and past directors and officers; Caesars Acquisition Company; Caesars Growth Partners, LLC; Caesars Entertainment Resort Properties, LLC; Caesars Enterprise Services, LLC; Caesars Interactive Entertainment, Inc.; Apollo Global Management, LLC; TPG Capital, LP; Hamlet Holdings LLC and certain of

its affiliates; Chatham Asset Management LLC; and affiliates of CEC that were transferees of assets fraudulently transferred from CEOC for (a) recovery of fraudulent transfers and the return to CEOC and its subsidiaries of valuable assets that were wrongly taken from them by the actions of CEOC's directors, its controlling shareholder, and others, (b) monetary damages and/or rescission for breaches of fiduciary duties, unjust enrichment, aiding and abetting breaches of fiduciary duties, civil conspiracy, misappropriation of corporate opportunity, and waste of corporate assets, and (c) imposition of a constructive trust or equitable lien over the transferred assets.

INTRODUCTION

1. This action arises from a series of self-dealing transactions between CEOC and its debtor subsidiaries (collectively, the "Debtors") and entities controlled by or under common control with CEC. Each of these transactions involved transfers that were made for inadequate consideration and less than reasonably equivalent value at a time when the transferor was insolvent, and that were made with the intent to hinder or delay CEOC's creditors. These transactions were conceived, crafted, and implemented by Apollo Global Management, TPG Capital, CEC, and individuals and agents connected with these entities. The transactions were effectuated through a series of complex agreements that enabled Apollo, TPG and CEC to gain control of CEOC's high-growth assets, unencumbered by CEOC debt, and to remove those assets beyond the reach of CEOC's creditors. Later, CEC and defendants who were also CEOC directors filed a lawsuit seeking declaratory relief sanctioning these asset transfers and insulating CEC, Apollo, TPG, and their affiliates from fraudulent transfer claims and other legal liabilities.

2. In January 2008, Apollo and TPG, using a vehicle called Hamlet Holdings LLC and affiliated entities (collectively, "Hamlet"), acquired the company then known as Harrah's Entertainment Inc.—and now known as CEC—in a highly leveraged \$30.7 billion buyout (the

“LBO”). Through Hamlet, Apollo and TPG (with Hamlet, the “Sponsors”) continue to own 60% of the common stock of CEC and controlled all aspects of CEOC’s governance and operations prior to June 2014.

3. At the time of the LBO, Harrah’s operated primarily through a wholly-owned subsidiary then known as Harrah’s Operating Company, Inc.—now known as CEOC—and it was this operating company that incurred most of the debt used to fund the LBO.¹ Harrah’s owned and operated a network of casinos in regional markets throughout the country. It also owned a significant number of casinos in destination markets—at that time, primarily Las Vegas and New Orleans.

4. Harrah’s used its customer loyalty program to encourage customers in its regional markets to give Harrah’s a greater share of their local gaming “spend” to earn more reward credits to use at other Harrah’s properties, particularly Harrah’s destination properties in Las Vegas and New Orleans. Many of these regional casinos were only modestly profitable in their own right, but they provided Harrah’s with the critical ability to interact and deepen relationships with customers in their home markets. Harrah’s portfolio of regional and destination properties created a hub-and-spoke business model that let the company capture customers on a regional basis and feed them to its destination properties.

5. Harrah’s also developed synergies within Las Vegas. Through various acquisitions preceding the LBO, Harrah’s developed a dominant and concentrated presence in the center of the Las Vegas Strip, including properties such as Caesars Palace, Paris Las Vegas, Bally’s Las Vegas, The Flamingo Las Vegas, Rio Las Vegas, The Cromwell (formerly Bill’s

¹ For purposes of simplicity, Plaintiffs sometimes refer to the collective operations of CEC and its subsidiaries as “Caesars” and, where appropriate, refer to the two Harrah’s entities by their Caesars names.

Gambling Hall & Saloon), Harrah's Las Vegas, and The Quad Resort & Casino (then known as the Imperial Palace), as well as parcels of undeveloped land near the Las Vegas Strip. Control of these contiguous casinos, hotels, restaurants, and entertainment locations was intended to ensure that, once brought to Las Vegas, Harrah's customers would remain within the Harrah's system.

6. In 1998, Harrah's hired Harvard Business School professor Gary Loveman to refine, develop, and expand Harrah's customer loyalty program. That program, known as Total Rewards, pioneered the use of data analytics and behavioral tracking to maximize play and profitability throughout the Harrah's casino network. As a result of Loveman's innovative approach and the success of Total Rewards, Harrah's became one of the premier operators of casino properties in the world. Loveman was promoted to Harrah's Chief Executive Officer in 2003.

7. Within months of the LBO, the global financial crisis and ensuing recession crippled the gaming industry. CEOC was especially hard hit as the revenues needed to service its massive debt fell short. At first, CEOC and the Sponsors responded to CEOC's unsustainable capital structure with exchange offers for CEOC's distressed debt and with credit facility amendments, which reduced some of CEOC's indebtedness and extended the maturity of much of the rest.

8. Soon, though, the Sponsors and CEC realized that CEOC would never be able to repay its enormous debt and embarked upon a new strategy. Beginning in 2009, the Sponsors and CEC devised a plan to salvage their multibillion-dollar investment in CEC by stripping CEOC of valuable assets and moving them to affiliates of CEC that the Sponsors and CEC controlled and which were not liable for CEOC's massive debts. In implementing this plan, the Sponsors' role went beyond mere governance and supervision of CEC and CEOC. Instead,

partners and officers from those firms—in particular, Apollo—played an active role in the day-to-day management of CEOC, in determining the specifics of CEOC’s corporate strategy, in choosing which assets would be transferred, in deciding which CEC affiliates would receive the assets, in selecting CEOC’s financial and legal advisors prior to June 2014, in negotiating for (and, simultaneously, against) CEOC, and in determining the prices to be paid for assets. Often this was done with little evident input from the management of CEOC itself, who were relegated to staffing the strategic initiatives the Sponsors, CEC, and their advisors devised.

9. In the course of these transfers, the Sponsors, CEC, and their advisors created a profusion of affiliates, holding companies, intermediate entities, and special purpose vehicles. In 2009, they created an affiliate named Harrah’s Interactive Entertainment—now known as Caesars Interactive Entertainment (“CIE”)—which was owned by two layers of holding companies, each with multiple classes of stock. In 2013, they created Caesars Entertainment Resort Properties, LLC (“CERP”) which, with various affiliated entities, took ownership of six existing properties indirectly owned by CEC (the “CMBS Properties”) and two CEOC properties. Also in 2013, the Sponsors, CEC, and their advisors created an entity called Caesars Acquisition Company and a subsidiary, Caesars Growth Partners, to receive the transfer of properties from CEOC. In 2014, they created a “services company” called Caesars Enterprise Services, which, among other things, took control of CEOC’s Total Rewards program, its enterprise services (including most of its employee workforce built over many years, and predating the LBO), and its property management business. Each of these affiliates was directly or indirectly controlled by CEC and the Sponsors, and each was created for the purpose of or in connection with transferring assets beyond the reach of CEOC’s creditors. In fact, in some

cases, the Sponsors and CEC openly characterized these affiliates as “bankruptcy remote”; that is, remote from the CEOC bankruptcy they knew was coming.

10. In May 2009, the Sponsors and CEC engineered the transfer of CEOC’s online gaming business, including CEOC’s World Series of Poker trademarks and intellectual property rights, to Caesars Interactive Entertainment. In August 2010, the Sponsors and CEC ordered CEOC to transfer its intellectual property rights in the CMBS Properties to CEC affiliates that managed those properties and, later, to transfer those rights to CERP. In September 2011, CEC and the Sponsors forced CEOC to sell CIE its rights to hold World Series of Poker tournaments. In October 2013, CEC and the Sponsors caused CEOC to convey two of CEOC’s significant Las Vegas properties to CERP. The next month, CEOC was instructed to transfer two other valuable properties to Growth Partners, along with valuable management fee streams. In March 2014, the Sponsors and CEC engineered CEOC’s sale of four of its most important remaining properties to Growth Partners, along with valuable management fee streams and 31 acres of undeveloped land. As part of that same transaction, CEOC transferred its rights in Total Rewards to a CES—a vehicle controlled by CERP and Growth Partners.

11. In mid-2014, the Sponsors and CEC announced a number of further initiatives designed to enrich CEC and the Sponsors at the expense of CEOC and its creditors. In May 2014, the Sponsors orchestrated what they described as a sale of 5% of CEOC’s common stock in an attempt to extricate CEC from its guarantee of CEOC’s bond debt. Also in May 2014, the Sponsors and CEC launched a tender offer for CEOC’s 5.625% Senior Notes due June 2015 and 10% Second Priority Notes due 2015. Although those notes had been trading at a significant discount to their face value, the Sponsors and CEC had CEOC spend over \$1 billion to redeem them at par, plus a premium, plus accrued interest, largely from Growth Partners and a hedge

fund that on information and belief had been cooperating with Apollo. A few weeks later, the Sponsors ordered CEOC to repay all amounts remaining under an intercompany revolver facility between CEC and CEOC, exhausting another \$261.8 million of CEOC's dwindling cash. In June 2014, the Sponsors and CEC caused CEOC to announce the closure of its modestly profitable Showboat Atlantic City property and to direct its VIP customers to a casino owned by CERP. In August 2014, the Sponsors, CEC, and CEOC filed a lawsuit in New York seeking a declaratory judgment that none of their fraudulent transfers and other acts had been illegal.

12. The Sponsors and CEC's strategy had several purposes. The first was to move CEOC's most valuable assets into new entities that would be insulated from CEOC's inevitable bankruptcy and improve the otherwise dismal prospects for the Sponsors' investment in CEC. The net effect was to divide Caesars' business into two segments: one a "Good Caesars," consisting of CIE, Growth Partners, CERP, and CES, that owned and controlled the prime assets formerly belonging to CEOC; the other, a "Bad Caesars," consisting of CEOC, which remains burdened by substantial debt and whose remaining properties consist primarily of regional casinos. Only the "Bad Caesars" remains liable for the vast majority of the debts incurred in the 2008 LBO.

13. But there also was a second, and equally crucial, objective: once the principal benefits of the synergies of the Caesars' network of properties and control of the Total Rewards customer loyalty program had been transferred to the Sponsors and CEC, CEOC's remaining regional assets would have greatly reduced value to any potential third-party purchaser. And by severing CEOC from its assets and from the core enterprise functions that it previously performed, the Sponsors and CEC were able to create certain risks to CEOC's ability to formulate a plan of reorganization (in addition to structural issues that already existed) that

would allow CEOC to emerge from chapter 11 as a standalone entity. Thus, when the long-expected bankruptcy came, the Sponsors and CEC hoped to acquire cheaply the assets that remained in CEOC and recreate the synergistic Caesars network without CEOC's troublesome debt.²

14. This second objective was, in essence, the willful destruction of CEOC's value. Ordinarily, such efforts would have been prevented by CEOC's board, which owed fiduciary duties to the company. Because CEOC was insolvent, these duties required CEOC's board to maximize the value of CEOC. CEOC's board, however, at the time was completely dominated by CEC and the Sponsors. At most times, it consisted of only two directors, both of whom were officers or directors of CEC and neither of whom was independent. In fact, CEOC had no independent directors until June 2014. In addition, CEOC did not have, and was not afforded, separate legal counsel or financial advisors to advise it on the transfers; CEOC's board did not create special committees of disinterested directors to assess the proposed transfers; there was no market process to ensure that CEOC received reasonably equivalent value for the assets it transferred; and, in virtually all cases, the board did not ask for or receive independent fairness opinions.

15. A third objective—admitted by the Sponsors—was to strengthen the Sponsors' hand in restructuring negotiations with CEOC's creditors. With CEOC's valuable assets stripped from CEOC and now firmly under the Sponsors' control, the Sponsors would enjoy leverage in their negotiations with creditors with respect to a CEOC restructuring. If creditors balked at a

² CEC subsequently agreed to a new-value bankruptcy plan where it proposed to buy CEOC's assets for a contribution of at least \$1.5 billion. *See* CEOC 8-K filed on Dec. 31, 2014. Almost simultaneously, CEC announced its plans to merge with Caesars Acquisition Corporation, thus recapturing the properties CEOC had transferred to Growth Partners. *See* CEC 8-K filed on December 22, 2014. As part of the proposed plan, the Sponsors proposed that CEOC would grant all persons and entities involved in the transfers general releases from any claims CEOC might have against them.

restructuring, the Sponsors would have nonetheless created—in their words—a “war chest” to use against the creditors in CEOC’s inevitable bankruptcy.

* * *

16. Because the consideration received by CEOC for these transfers was wholly inadequate and because the transfers were intended to enrich CEC and the Sponsors at the expense of CEOC and its creditors, the transfers were unlawful and avoidable.

17. In addition, the transfers were made with actual intent to hinder, delay or defraud CEOC’s creditors and thus the transfers should be avoided or the value of the property transferred must be returned to CEOC. Defendants also are liable for monetary damages for their role in these transactions.

18. CEC, as CEOC’s controlling shareholder, CEC’s directors (by virtue of their domination over CEOC and its board), and CEOC’s directors and officers owed fiduciary duties to CEOC. Because CEOC was insolvent at all relevant times, these defendants had a duty to maximize CEOC’s value. Defendants breached their fiduciary duties or aided and abetted others in breaching fiduciary duties, and are therefore liable for damages to CEOC.

19. The conduct of the defendants named in this lawsuit has already been the subject of a comprehensive investigation conducted by a court-appointed examiner, Richard Davis (the “Examiner”). As summarized by the Examiner at the outset of his 930-page report:

The principal question being investigated was whether in structuring and implementing these transactions assets were removed from CEOC to the detriment of CEOC and its creditors.

The simple answer to this question is “yes.” As a result, claims of varying strength arise out of these transactions for constructive fraudulent transfers, actual fraudulent transfers (based on intent to hinder or delay creditors) and breaches of fiduciary duty by CEOC directors and officers and CEC. Aiding and abetting breach of fiduciary duty claims, again of varying strength, exist against the Sponsors and certain of CEC’s directors.

The Examiner concluded that “[t]he potential damages from those claims considered reasonable or strong range from \$3.6 billion to \$5.1 billion.” The Examiner defined “strong” claims as those “having a high likelihood of success” and “reasonable” claims as those “having a reasonable, or better than 50/50, chance of success.” That range of potential damages excluded other claims that were characterized by the Examiner as viable, albeit with a less than a 50/50 chance of success. Nor did the Examiner’s range include certain types of damages that the Examiner determined may be available on strong and reasonable claims, but that the Examiner did not quantify. Many of the allegations and claims set forth in this Complaint are based on the Examiner’s comprehensive investigation.

JURISDICTION AND VENUE

20. This Court has subject matter jurisdiction over the claims for relief in this adversary proceeding pursuant to 28 U.S.C. § 1334(b).

21. Venue for this adversary proceeding properly lies in this judicial district pursuant to 28 U.S.C. § 1409.

PARTIES

A. Plaintiffs

22. Plaintiff Caesars Entertainment Operating Company, Inc. (“CEOC”) is a Delaware corporation that owns, operates, and manages casinos and other entertainment properties in Las Vegas and elsewhere in the United States. CEOC’s headquarters are located at One Caesars Palace Drive, Las Vegas, Nevada 89109.

23. Plaintiff Caesars License Company, LLC (“CLC”) (f/k/a Harrah’s License Company, LLC) is a wholly owned subsidiary of CEOC that owned certain intellectual property that was transferred or licensed through the transactions set forth in this Complaint.

24. Plaintiff Octavius Linq Holding Co., LLC is a wholly owned subsidiary of CEOC that owned the equity of Octavius Linq Intermediate Holding Co., which in turn owned Octavius Tower, Linq Retail, RDE Casino and the Observation Wheel, and certain undeveloped land, which were transferred through the transactions set forth in this Complaint.

25. Plaintiff PHW Las Vegas, LLC is a wholly owned subsidiary of CEOC that owned the equity of Planet Hollywood Las Vegas, which was transferred through the transactions set forth in this Complaint.

26. Plaintiff Caesars Baltimore Acquisition Company, LLC is a wholly owned subsidiary of CEOC that owned CEOC's interests in Caesars Baltimore Investment Co., LLC, which were transferred through the transactions set forth in this Complaint.

27. Plaintiff PHW Manager, LLC is a wholly owned subsidiary of CEOC that owned CEOC's interests in management fees generated from Planet Hollywood Las Vegas, a portion of which were transferred through the transactions set forth in this Complaint.

28. Plaintiff Caesars Baltimore Management Company, LLC is a wholly owned subsidiary of CEOC that owned CEOC's interests in management fees generated from Horseshoe Baltimore, a portion of which were transferred through the transactions set forth in this Complaint.

29. Plaintiff 3535 LV Corp. is a wholly owned subsidiary of CEOC that owned certain undeveloped land, which was transferred through the transactions set forth in this Complaint.

30. Plaintiff 3535 LV Parent, LLC is a wholly owned subsidiary of CEOC that owned CEOC's interests in 3535 LV NewCo, LLC and certain undeveloped land, which were transferred through the transactions set forth in this Complaint.

31. Plaintiff Corner Investment Company Newco, LLC is a wholly owned subsidiary of CEOC that owned CEOC's interests in Corner Investment Company, LLC, which were transferred through the transactions set forth in this Complaint.

32. Plaintiff JCC Holding Company II NewCo, LLC is a wholly owned subsidiary of CEOC that owned CEOC's interests in JCC Holding Company III, LLC, which were transferred through the transactions set forth in this Complaint.

33. Plaintiff Parball Parent, LLC (together with its subsidiaries) is a wholly owned subsidiary of CEOC that owned CEOC's interests in Parball NewCo, LLC and certain undeveloped land, which were transferred through the transactions set forth in this Complaint.

34. Plaintiff Parball Corporation (together with its subsidiaries) is a wholly owned subsidiary of CEOC that owned certain undeveloped land, which was transferred through the transactions set forth in this Complaint.

35. Plaintiff Cromwell Manager, LLC is a wholly owned subsidiary of CEOC that owned CEOC's interests in certain management fees, a portion of which were transferred through the transactions set forth in this Complaint.

36. Plaintiff Bally's Las Vegas Manager, LLC is a wholly owned subsidiary of CEOC that owned CEOC's interests in certain management fees, a portion of which were transferred through the transactions set forth in this Complaint.

37. Plaintiff The Quad Manager, LLC is a wholly owned subsidiary of CEOC that owned CEOC's interests in certain management fees, a portion of which were transferred through the transactions set forth in this Complaint.

38. Plaintiff FHR Corporation is a wholly owned subsidiary of CEOC that owned certain CEOC assets that were transferred through the transactions set forth in this Complaint.

39. Plaintiff FHR Parent, LLC is a wholly owned subsidiary of CEOC that owned certain CEOC assets that were transferred through the transactions set forth in this Complaint.

40. Plaintiff LVH Corporation is a wholly owned subsidiary of CEOC that owned certain CEOC assets that were transferred through the transactions set forth in this Complaint.

41. Plaintiff LVH Parent, LLC is a wholly owned subsidiary of CEOC that owned certain CEOC assets that were transferred through the transactions set forth in this Complaint.

42. Plaintiff Flamingo-Laughlin, Inc. is a wholly owned subsidiary of CEOC that owned certain CEOC assets that were transferred through the transactions set forth in this Complaint.

43. Plaintiff Flamingo-Laughlin Parent, LLC is a wholly owned subsidiary of CEOC that owned certain CEOC assets that were transferred through the transactions set forth in this Complaint.

44. Plaintiff DCH Exchange LLC is a wholly owned subsidiary of CEOC that provided easements on certain parcels of land as set forth in this Complaint.

45. Plaintiff Las Vegas Resort Development Inc. is a wholly owned subsidiary of CEOC that provided easements on certain parcels of land as set forth in this Complaint.

46. Plaintiff Winnick Holdings LLC is a wholly owned subsidiary of CEOC that provided easements on certain parcels of land as set forth in this Complaint.

47. Plaintiff TRB Flamingo LLC is a wholly owned subsidiary of CEOC that provided easements on certain parcels of land as set forth in this Complaint.

B. Corporate Defendants

48. Defendant Caesars Entertainment Corporation ("CEC") is a Delaware corporation that, through subsidiaries, joint ventures, and other arrangements, owns, operates, and manages gambling casinos and properties in the United States and foreign countries. CEC's offices are

located at One Caesars Palace Drive, Las Vegas, Nevada. The Sponsors own approximately 60% of the voting stock of CEC and have the right to appoint CEC's entire board of directors.

49. Defendant Caesars Acquisition Company ("CAC") is a Delaware corporation CEC formed in 2013 to make an equity investment in Growth Partners. CAC is a public company whose stock is listed and traded on NASDAQ. 66% of the voting stock of CAC is owned by affiliates of the Sponsors. The Sponsors also control CAC pursuant to an Omnibus Voting Agreement that gives them the right to appoint CAC's entire board of directors. CAC's offices are located at One Caesars Palace Drive, Las Vegas, Nevada.

50. Defendant Caesars Growth Partners, LLC ("Growth Partners") is a Delaware limited liability company that was formed in 2013 as a joint venture between CEC and CAC to acquire assets from CEOC and CEC. All of the voting units of Growth Partners are owned by CAC. All of the non-voting units of Growth Partners are owned by CEC or its subsidiaries and affiliates. Upon information and belief, Growth Partners' offices are located at One Caesars Palace Drive, Las Vegas, Nevada.³

51. Defendant Caesars Entertainment Resort Properties, LLC ("CERP") is a Delaware limited liability company that was formed in October 2013 as a wholly-owned subsidiary of CEC for the purpose of acquiring, holding, and operating certain Caesars properties. CERP's offices are located at One Caesars Palace Drive, Las Vegas, Nevada.⁴

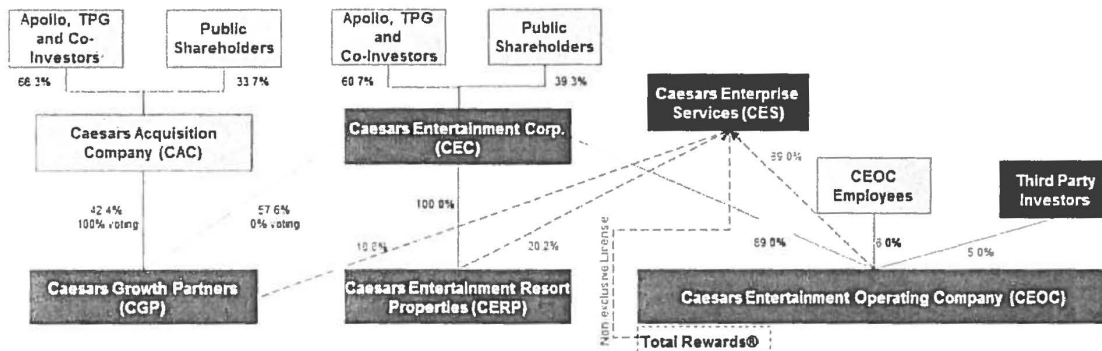
³ For purposes of this Complaint, Growth Partners is defined to include all of the direct and indirect subsidiaries, affiliates, holding companies, and other entities owned by, controlled by, or under common ownership or control with Growth Partners that received assets or ownership interests in conjunction with any of the relevant transfers.

⁴ For purposes of this Complaint, CERP is defined to include all of the direct and indirect subsidiaries, affiliates, holding companies, and other entities owned by, controlled by, or under common ownership or control with CERP that received assets or ownership interests in conjunction with any of the relevant transfers.

52. Defendant Caesars Enterprise Services, LLC (“CES”) is a Delaware limited liability company that was formed on April 4, 2014, for the purpose of acquiring and managing the enterprise-wide assets of CEOC for the benefit of CEC, CEOC, Growth Partners, and CERP. Upon information and belief, CEC’s offices are located at One Caesars Palace Drive, Las Vegas, Nevada.

53. Defendant Caesars Interactive Entertainment, Inc. (“CIE”) is a Delaware corporation formed in April 2009 by CEC. CIE operates an online gaming business that includes so-called “play for fun” games as well as “real money” games in certain jurisdictions. In addition, CIE owns the World Series of Poker tournaments and brand. The majority of the voting stock of CIE is owned by Growth Partners. Upon information and belief, CIE’s offices are located at 1411 Peel, Montreal, Canada.

54. The following chart illustrates the Caesars organizational structure following the creation of Growth Partners and CERP in 2013, the transfer by CEC of 11% of its equity stake in CEOC beginning in May 2014, and the creation of CES:



55. CEC, CEOC, CERP, CAC, and Growth Partners have created and do business through dozens of direct and indirect subsidiaries, affiliates, holding companies, and other entities, all of which are owned or controlled by these companies or by the Sponsors. CEC,

CEOC, CERP, CAC, and Growth Partners frequently create new such entities, or abandon older ones, to conceal the nature or details of transfers or other improper purposes. Because these entities are owned, controlled, and dominated by the Sponsors, CEC, CEOC, CERP, CAC, or Growth Partners, and have been used for improper purposes, their independent identities should be disregarded and they should be treated as alter egos of their ultimate owners.

56. Defendant Apollo Global Management, LLC is a Delaware limited liability company formed on July 3, 2007. Apollo's global headquarters are located at 9 West 57th Street, New York, New York. For purposes of this Complaint, Apollo is defined to include all of its funds, subsidiaries, or vehicles that have invested in CEC or any of its affiliates.

57. Defendant TPG Capital, LP is a Delaware limited partnership formed on November 15, 2011. Upon information and belief, TPG's global headquarters are located at 345 California Street, San Francisco, California. For purposes of this Complaint, TPG is defined to include all of its funds and/or subsidiaries that invested in CEC or any of its affiliates.

58. Defendant Hamlet Holdings LLC is a Delaware limited liability company. Upon information and belief, Hamlet Holdings LLC was formed in 2002 and is headquartered in Fort Worth, Texas. Hamlet Holdings LLC and its affiliates, including Defendants Apollo Hamlet Holdings, LLC, Apollo Hamlet Holdings B, LLC, TPG Hamlet Holdings, LLC, TPG Hamlet Holdings B, LLC, Co-Invest Hamlet Holdings, Series LLC, and Co-Invest Hamlet Holdings B, LLC (collectively with Hamlet Holdings LLC, "Hamlet"), are the vehicles by which the Sponsors raised money to invest in and execute the LBO, control CEC, and invest in and control CAC. According to SEC filings, Hamlet Holdings LLC's members consist of five persons from Apollo and TPG. The Sponsors, together with investment vehicles they created, at all relevant times owned approximately 60% of the voting common stock of CEC and 66% of the voting

common stock of CAC. According to SEC filings, Apollo and TPG gave an irrevocable proxy to defendant Hamlet Holdings LLC under which Hamlet Holdings LLC has sole voting and sole dispositive power with respect to these shares of CEC and CAC.

C. Individual Defendants

59. Defendant Jeffrey Benjamin was at all relevant times a director of CEC and a senior advisor to Apollo. Upon information and belief, Benjamin stood to benefit personally from some or all of the transactions described in this Complaint.

60. Defendant David Bonderman was at all relevant times a director of CEC and is currently a director of CEOC. Bonderman is a founding partner of TPG and, upon information and belief, stood to benefit personally from some or all of the transactions described in this Complaint.

61. Defendant Kelvin L. Davis was at all relevant times a director of CEC and is currently a director of CEOC. Davis is a senior partner of TPG and, upon information and belief, stood to benefit personally from some or all of the transactions described in this Complaint.

62. Defendant Jeffrey Housenbold was a CEC director from December 2011 to March 2014 and, upon information and belief, stood to benefit personally from some or all of the transactions described in this Complaint.

63. Defendant Fred J. Kleisner became a CEC director in July 2013. Upon information and belief, Kleisner stood to benefit personally from some or all of the transactions described in this Complaint.

64. Defendant Gary Loveman was at all relevant times the Chairman and a director of CEC and CEOC. Loveman also was the Chief Executive Officer and President of CEC and CEOC until June 30, 2015. Upon information and belief, Loveman stood to benefit personally from some or all of the transactions described in this Complaint.

65. Defendant Karl Peterson was at all relevant times a partner at TPG and from 2008 until July 2013 a director of CEC. Upon information and belief, Peterson stood to benefit personally from some or all of the transactions described in this Complaint.

66. Defendant Eric Press was at all relevant times a director of CEC and a partner at Apollo. Upon information and belief, Press stood to benefit personally from some or all of the transactions described in this Complaint.

67. Defendant Marc C. Rowan was at all relevant times a director of CEC and from June 2014 to March 2016 was a director of CEOC. Rowan is a founding partner of Apollo and, upon information and belief, stood to benefit personally from some or all of the transactions described in this Complaint.

68. Defendant David B. Sambur has been a director of CEC since 2010 and a director of CEOC since June 2014. Sambur is a partner of Apollo and, upon information and belief, stood to benefit personally from some or all of the transactions described in this Complaint.

69. Defendant Lynn Swann was at all relevant times a director of CEC and, upon information and belief, stood to benefit personally from some or all of the transactions described in this Complaint.

70. Defendant Christopher Williams was at all relevant times a director of CEC and, upon information and belief, stood to benefit personally from some or all of the transactions described in this Complaint.

71. According to CEC's proxy statements, CEC does not consider Messrs. Loveman, Bonderman, Davis, Rowan, Sambur, Benjamin, Peterson, and Press to be independent directors because of their relationships with affiliates of the Sponsors or other relationships with CEC.

D. Other Defendants

72. Defendant Chatham Asset Management LLC is an asset management company with its principal place of business at 26 Main Street, Chatham Township, New Jersey. Chatham is a limited liability company organized under the laws of Delaware.

E. Transferee Defendants

73. In addition to CIE, CEC, CERP, CAC, and Growth Partners, the Sponsors and CEC formed numerous entities that received transfers of real property, tangible and personal property, intellectual property, and other assets from CEOC and from affiliates of CEOC. Upon information and belief and unless otherwise indicated, the offices and premises of each of these defendants are located at the same Las Vegas address as CEC.

74. The “2009 Transferees” are the entities that received assets and the business that CEOC transferred from its online gaming business. These include the following defendants:

- a. CEC and CIE;
- b. HIE Holdings Topco, Inc., a Delaware corporation;
- c. HIE Holdings, Inc., a Delaware corporation;
- d. Caesars Tournament, LLC, a Delaware limited liability company; and
- e. Rio Properties, LLC, a Nevada limited liability company.

75. The “CMBS PropCos” are the entities that received assets that CEOC transferred in 2010 as a result of the CMBS Loan Agreement Amendment and Trademarks Transfer. These include the following defendants:

- a. CEC;
- b. Rio PropCo, LLC, a Delaware limited liability company;
- c. Harrah’s Las Vegas PropCo, LLC, a Delaware limited liability company;

- d. Harrah's Atlantic City PropCo, LLC, a Delaware limited liability company;
- e. Harrah's Laughlin PropCo, LLC, a Delaware limited liability company;
- f. Flamingo Las Vegas Propco, LLC, a Delaware limited liability company;
- and
- g. Paris Las Vegas PropCo, LLC, a Delaware limited liability company.

76. The "WSOP Transaction Transferees" are the entities that received assets that CEOC transferred in 2011 as a result of the WSOP Transaction. These include the following defendants:

- a. CEC;
- b. CIE;
- c. Caesars Tournament, LLC; and
- d. Rio Properties, LLC.

77. The "Linq/Octavius Transferees" are the entities that received assets that CEOC transferred in 2013 as a result of the Linq and Octavius transfers. These include defendants CEC and Rio Properties, LLC.

78. The "2013 Transferees" are the entities that received assets CEOC transferred in 2013 as a result of the 2013 Transaction Agreement. These include the following defendants:

- a. CEC, CAC, and Growth Partners;
- b. Caesars Growth PH Fee, LLC, a Delaware limited liability company;
- c. Caesars Growth Baltimore Fee, LLC, a Delaware limited liability company;
- d. PHWLTV, LLC, a Nevada limited liability company; and

- e. Caesars Growth PH, LLC, a Delaware limited liability company.

79. The “Services Transferees” are the entities that received management services from CEOC and access to CEOC’s Total Rewards program pursuant to the 2010 Shared Services Agreement, the 2013 Shared Services Agreement, and the Management Services Agreements.

These include the following defendants:

- a. CMBS PropCos, CEC, CERP, and Growth Partners;
- b. Flamingo Las Vegas Operating Company, LLC, a Nevada limited liability company;
- c. Paris Las Vegas Operating Company, LLC, a Nevada limited liability company;
- d. Harrah’s Laughlin, LLC, a Nevada limited liability company;
- e. Rio CERP Manager, LLC, a Nevada limited liability company;
- f. Paris CERP Manager, LLC, a Nevada limited liability company;
- g. Laughlin CERP Manager, LLC, a Nevada limited liability company;
- h. HLV CERP Manager, LLC, a Nevada limited liability company;
- i. HAC CERP Manager, LLC, a New Jersey limited liability company;
- j. Harrah’s Las Vegas, LLC, a Nevada limited liability company;
- k. Flamingo CERP Manager, LLC, a Nevada limited liability company;
- l. 3535 LV Newco, LLC, a Delaware limited liability company;
- m. Parball NewCo, LLC, a Delaware limited liability company;
- n. Corner Investment Company, LLC, a Nevada limited liability company;
- and
- o. Jazz Casino Company, LLC, a Louisiana limited liability company.

80. The “2014 Transferees” are the entities that received properties from CEOC as a result of the 2014 Transaction Agreement. These include the following defendants:

- a. CEC, CAC, Growth Partners, 3535 LV Newco, LLC, Parball NewCo, LLC, and Corner Investment Company, LLC;
- b. Caesars Growth Bally’s LV, LLC, a Delaware limited liability company;
- c. Caesars Growth Quad, LLC, a Delaware limited liability company;
- d. Caesars Growth Cromwell, LLC, a Delaware limited liability company;
- e. Caesars Growth Harrah’s New Orleans, LLC, a Delaware limited liability company;
- f. Caesars Linq, LLC, a Delaware limited liability company;
- g. Caesars Growth Laundry, LLC, a Delaware limited liability company;
- h. FHR NewCo, LLC, a Delaware limited liability company;
- i. Flamingo-Laughlin NewCo, LLC, a Delaware limited liability company;
- j. LVH NewCo, LLC, a Delaware limited liability company; and
- k. Laundry NewCo, LLC, a Delaware limited liability company.

81. The “Easement Transferees” are the entities that were granted easements in 2011 on four lots of unimproved real estate, comprising approximately 25.8 acres, directly east of various Caesars properties. These include the following defendants:

- a. Flamingo Las Vegas Propco, LLC and Caesars Linq, LLC, each of whom is identified above; and
- b. 3535 LV Corp. (formerly known as Harrah’s Imperial Palace Corporation), a Nevada corporation (which is not named as a defendant as it subsequently transferred its interests in the Quad to Growth Partners).

82. The “Total Rewards Transferees” are the entities that received access to or rights in Total Rewards as a result of the 2014 Transaction Agreement and the formation of CES.

These include the following defendants:

- a. CEC, CERP, Growth Partners, and CES;
- b. Caesars Growth Bally’s LV LLC, a Delaware company;
- c. Flamingo Las Vegas Operating Company, LLC;
- d. Harrah’s Las Vegas, LLC;
- e. Harrah’s Laughlin, LLC;
- f. Paris Las Vegas Operating Company, LLC;
- g. Rio CERP Manager, LLC;
- h. Paris CERP Manager, LLC;
- i. Laughlin CERP Manager, LLC;
- j. HLV CERP Manager, LLC;
- k. HAC CERP Manager, LLC; and
- l. Flamingo CERP Manager, LLC.

BACKGROUND

A. THE CAESARS ENTITIES

83. In January 2008, the Sponsors acquired CEC in a \$30.7 billion leveraged buyout. The acquisition was financed with approximately \$24 billion of new debt. More than two thirds of this new debt was issued by CEOC (at the time, Harrah’s Entertainment Operating Company). Most of the debt issued by CEOC was also guaranteed by CEC. The Sponsors and other investors also contributed approximately \$6.1 billion in cash, and the balance of the LBO was funded through other borrowings.

Notes (which includes Trilogy and Relative Value) (the “Senior Unsecured Notes Group”), and (3) with the insurers for the Caesars enterprise.

1. Since my last statement to the Court, there has been material progress in the mediation. This includes four in-person mediation sessions among the Debtors (represented by Kirkland & Ellis LLP and Millstein & Co.), the CEC Parties (represented by Milbank, Tweed, Hadley & McCloy LLP and PJT Partners), and the Noteholder Committee (represented by Jones Day and Houlihan Lokey). Two of these mediation sessions were primarily with principals for the parties and two were primarily with legal and financial advisors. I have also mediated two in-person mediation sessions with the Senior Unsecured Notes Group and one session with Caesars’ insurers. In addition, I have had numerous other in-person and telephonic discussions with principals and advisors for these parties outside of the official mediation sessions, including in-person meetings and telephonic discussions with Marc Rowan, a founding principal of Apollo Global Management, LLC, as well as with a senior principal at TPG.

2. Each of these mediation sessions has been productive, and I believe the parties are making progress towards a consensual resolution of the Debtors’ cases and the related litigation against the CEC Parties, while also addressing real time developments relevant to the Plan. In particular, CEC and the Debtors recently entered into a restructuring support agreement with certain second lien noteholders that provides for materially enhanced recoveries to second lien noteholders under the Debtors’ plan of reorganization (the “2L RSA”). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The mediation is also focused on issues related to the allocation of proceeds from the anticipated sale

of Caesars Interactive Entertainment, a recent development that requires thoughtful negotiations among the many interested parties involved while also creating new settlement currency. In addition, the Debtors, CEC, and the Noteholder Committee have been engaged in negotiations regarding the non-monetary terms of a potential restructuring support agreement among the parties.

3. This is a very complicated mediation involving multiple parties and issues. The process of working through and resolving those issues necessarily takes time. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Dated: August 16, 2016

Respectfully,

/s/ Joseph J. Farnan, Jr.
JOSEPH J. FARNAN, JR.

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:)	
	)	Chapter 11
)	
CAESARS ENTERTAINMENT OPERATING	)	Case No. 15-01145 (ABG)
COMPANY, INC., <u>et al.</u> ¹)	
)	
Debtors.	)	(Jointly Administered)
)	

DISCLOSURE STATEMENT FOR THE DEBTORS'
SECOND AMENDED JOINT PLAN OF REORGANIZATION
PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE

James H.M. Sprayregen, P.C.
David R. Seligman, P.C.
KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS INTERNATIONAL LLP
300 North LaSalle
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200

Paul M. Basta, P.C.
Nicole L. Greenblatt, P.C.
KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS INTERNATIONAL LLP
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900

Counsel to the Debtors and Debtors in Possession

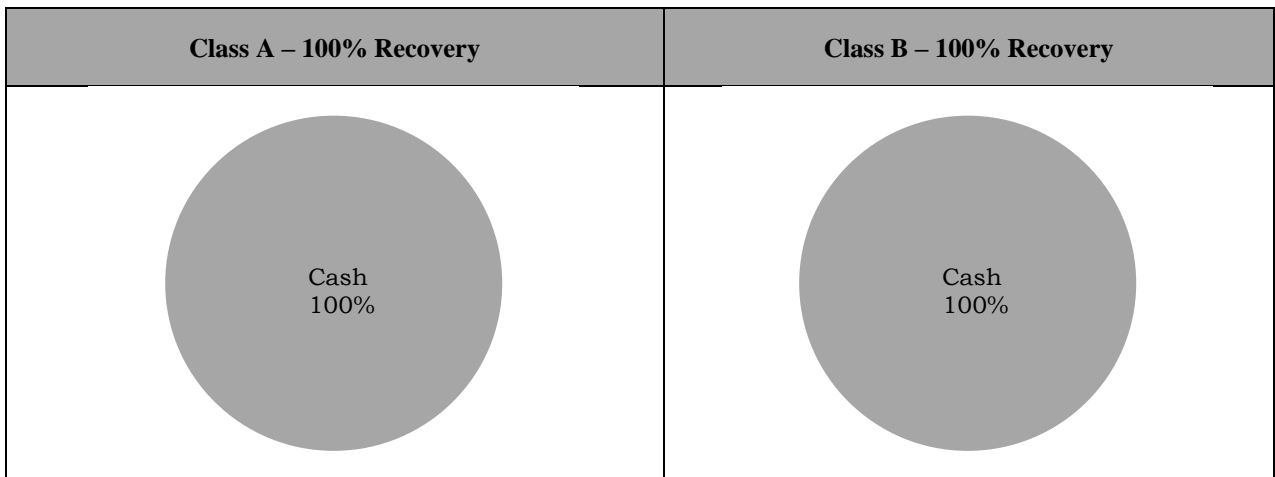
Dated: July 11, 2016

¹ A complete list of the Debtors and the last four digits of their federal tax identification numbers may be obtained at <https://cases.primeclerk.com/CEOC>.

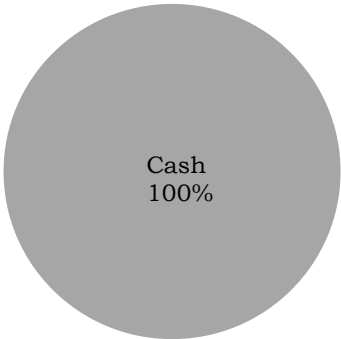
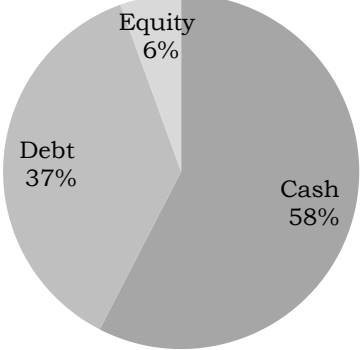
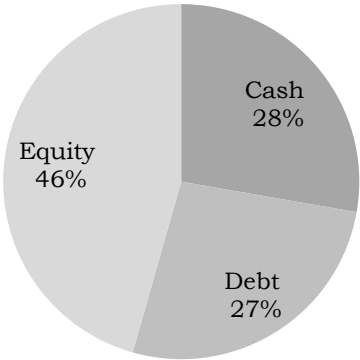
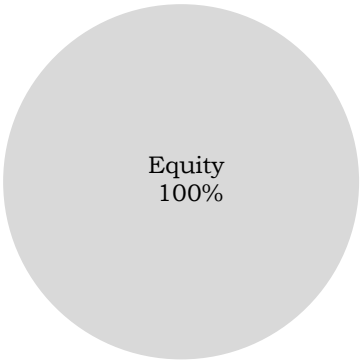
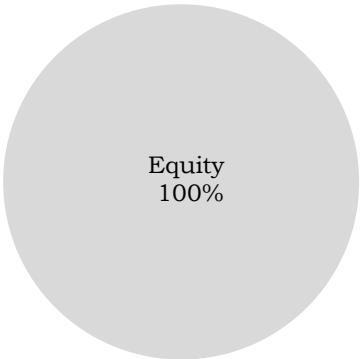
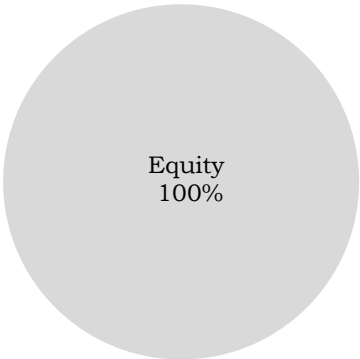


Generally, the Non-First Lien Claimants will share a Pro Rata portion of the Non-First Lien Recovery Consideration. However, Holders of Undisputed Unsecured Claims and Disputed Unsecured Claims, if they vote as a Class to accept the Plan, will also receive Cash from the Unsecured Creditor Cash Pool (which will be comprised of up to approximately \$6.2 million contributed by New CEC) on the terms set forth in the Plan. Similarly, Holders of Insurance Covered Unsecured Claims, after accounting for insurance, will also receive Cash from the Unsecured Insurance Creditor Cash Pool (which will be comprised of up to approximately \$300,000 contributed by New CEC) on the terms set forth in the Plan. In addition, with respect to the Par Recovery Unsecured Claims, Winnick Unsecured Claims, Caesars Riverboat Casino Unsecured Claims, and Chester Downs Management Unsecured Claims, Holders of such Claims shall receive Non-First Lien Recovery Consideration in an amount equal to 100%, 67%, 71%, and 87%, respectively, of such Holders' Claim.¹⁷ And Subsidiary-Guaranteed Notes Claims will receive Non-First Lien Recovery Consideration in an amount equal to approximately 85% (midpoint) of such Holders' Claims. The Convenience Unsecured Claims will receive recoveries from the Convenience Cash Pool, which consists of \$12.5 million, and will not receive any recoveries from the Non-First Lien Recovery Consideration. Additionally, the Non-Obligor Unsecured Claims will receive payment in full in cash due to the fact that the Non Obligor Debtors are not liable for any of the Debtors' funded debt obligations.

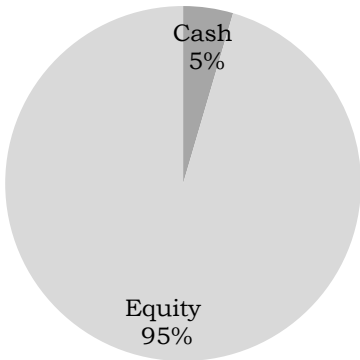
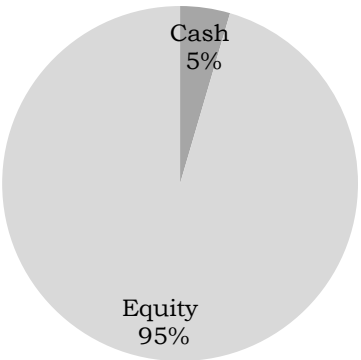
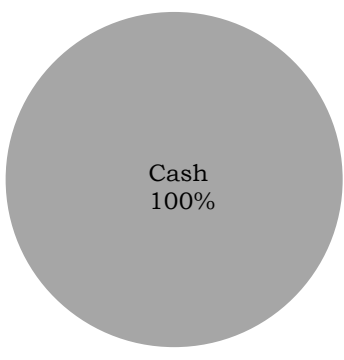
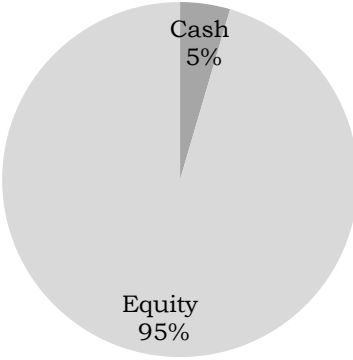
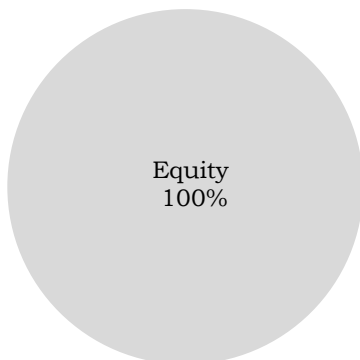
The following pie charts illustrate the approximate allocation of the various forms of Plan consideration (cash, debt, and equity) that comprise the recovery of each class of funded debt and unsecured claims:



¹⁷ As described more fully in Article VIII.B.2 and **Exhibit D**, the Debtors have carefully reviewed the result of their Liquidation Analysis and have determined that certain of the Debtor entities, including the Non-Obligor Debtors, the Par Recovery Debtors, Winnick Holdings, LLC, Caesars Riverboat Casino, LLC, and Chester Downs Management Company, LLC are likely to achieve greater recoveries in a liquidation scenario than those otherwise available to Holders of Non-First Lien Claims under the Plan. Recoveries for these Debtors have been adjusted accordingly under the Plan.

Class C – 100% Recovery	Class D – Prepetition Credit Agreement Claims¹⁸ Class F Rejects – 113% - 117% Recovery Class F Accepts – 112% - 115% Recovery
 <p>Cash 100%</p>	 <p>Cash 58%</p> <p>Debt 37%</p> <p>Equity 6%</p>
Class E – Secured First Lien Notes Claims¹ Class F Rejects – 96% - 128% Recovery Class F Accepts – 94% - 124% Recovery	Class F – Second Lien Notes Claims Accept: 29% - 48% Recovery Reject: 22% - 34% Recovery
 <p>Cash 28%</p> <p>Debt 27%</p> <p>Equity 46%</p>	 <p>Equity 100%</p>
Class G – Subsidiary-Guaranteed Notes Claims 61%-105% Recovery	Class H – Senior Unsecured Notes Claims Accept: 33% - 56% Recovery Reject: 22% - 33% Recovery
 <p>Equity 100%</p>	 <p>Equity 100%</p>

¹⁸ Pie chart reflects consideration split in scenario where Class F rejects the Plan

Class I – Undisputed General Unsecured Claims Accept: 34% - 54% Recovery Reject: 22% - 33% Recovery	Class J – Disputed General Unsecured Claims 34% - 54% Recovery
 <p>Cash 5%</p> <p>Equity 95%</p>	 <p>Cash 5%</p> <p>Equity 95%</p>
Class K – Convenience Class Claims 46% Recovery	Class L – Insurance Covered Unsecured Claims 34% - 54% Recovery
 <p>Cash 100%</p>	 <p>Cash 5%</p> <p>Equity 95%</p>
Classes M-P – Unsecured Claims against BIT Debtors 67% - 100% Recovery	
 <p>Equity 100%</p>	

Importantly, the Plan is a joint plan of reorganization for all Debtors in the Chapter 11 Cases, and the Plan takes into account the different rights and claim priorities at each Debtor in allocating recoveries as well as the various intercreditor arrangements between the Debtors' various funded debt stakeholders. The recoveries described above are improved recoveries based on each respective Class voting to accept the Plan. Recoveries under the Plan may be less for Holders of Claims in a particular Class if that Class does not vote to accept the Plan.

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:

CAESARS ENTERTAINMENT OPERATING
COMPANY, INC., et al.,¹

Debtors.

)
) Chapter 11
)
) Case No. 15-01145 (ABG)
)
)
) (Jointly Administered)
)

DEBTORS' SECOND AMENDED JOINT PLAN OF REORGANIZATION
PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE

Nothing contained herein shall constitute an offer, acceptance, or a legally binding obligation of the Debtors or any other party in interest and this Plan is subject to approval by the Bankruptcy Court and other customary conditions. This Plan is not an offer with respect to any securities. YOU SHOULD NOT RELY ON THE INFORMATION CONTAINED IN, OR THE TERMS OF, THIS PLAN FOR ANY PURPOSE PRIOR TO THE CONFIRMATION OF THIS PLAN BY THE BANKRUPTCY COURT.

James H.M. Sprayregen, P.C.
David R. Seligman, P.C.
KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS INTERNATIONAL LLP
300 North LaSalle
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200

Paul M. Basta, P.C.
Nicole L. Greenblatt, P.C.
KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS INTERNATIONAL LLP
601 Lexington Avenue
New York, New York 10022-4611
Telephone: (212) 446-4800
Facsimile (212) 446-4900

Counsel to the Debtors and Debtors in Possession

Dated: July 11, 2016

¹ The last four digits of Caesars Entertainment Operating Company, Inc.'s tax identification number are 1623. A complete list of the Debtors (as defined herein) and the last four digits of their federal tax identification numbers are identified on **Exhibit A** attached hereto.

EXCEPT AS OTHERWISE PROVIDED HEREIN OR AS AGREED TO BY THE REORGANIZED DEBTORS, ANY AND ALL PROOFS OF CLAIM FILED AFTER THE CLAIMS BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT ANY FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS SUCH LATE PROOF OF CLAIM HAS BEEN DEEMED TIMELY FILED BY A FINAL ORDER.

E. Amendments to Claims.

On or after the Effective Date, a Claim may not be Filed or amended without the prior authorization of the Bankruptcy Court or the Reorganized Debtors, and any such new or amended Claim Filed shall be deemed disallowed in full and expunged without any further notice to or action, order, or approval of the Bankruptcy Court to the maximum extent provided by applicable law.

F. No Distributions Pending Allowance.

If an objection to a Claim or Interest or portion thereof is Filed, no payment or distribution provided under the Plan shall be made on account of such Claim or Interest or portion thereof unless and until such Disputed Claim or Interest becomes an Allowed Claim or Interest, unless otherwise agreed to by the Reorganized Debtors.

G. Distributions After Allowance.

To the extent that a Disputed Claim or Interest ultimately becomes an Allowed Claim or Interest, distributions (if any) shall be made to the Holder of such Allowed Claim or Interest in accordance with the provisions of the Plan. Unless otherwise agreed to by the Reorganized Debtors and the Disbursing Agent, on the first Quarterly Distribution Date after the date that the order or judgment of the Bankruptcy Court (or any other court of competent jurisdiction with jurisdiction over the Disputed Claim) allowing any Disputed Claim or Interest becomes a Final Order, the Disbursing Agent shall provide to the Holder of such Claim or Interest the distribution (if any) to which such Holder is entitled under the Plan as of the Effective Date, less any previous distribution (if any) that was made on account of the undisputed portion of such Claim or Interest, without any interest, dividends, or accruals to be paid on account of such Claim or Interest unless required under applicable bankruptcy law.

**ARTICLE VIII.
SETTLEMENT, RELEASE, INJUNCTION, AND RELATED PROVISIONS**

A. Discharge of Claims and Termination of Interests.

To the maximum extent provided by section 1141(d) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan or in any contract, instrument, or other agreement or document created pursuant to the Plan, the distributions, rights, and treatment that are provided in the Plan shall be in complete satisfaction, discharge, and release, effective as of the Effective Date, of Claims (including any Intercompany Claims resolved or compromised after the Effective Date by the Reorganized Debtors), Interests, and Causes of Action of any nature whatsoever, including any interest accrued on Claims or Interests from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against, and Interests in, the Debtors or any of their assets or properties, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims and Interests, including demands, liabilities, and Causes of Action that arose before the Effective Date, any liability (including withdrawal liability) to the extent such Claims or Interests relate to services performed by current or former employees of the Debtors prior to the Effective Date and that arise from a termination of employment, any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code, in each case whether or not: (1) a Proof of Claim or Proof of Interest based upon such debt, right, or Interest is Filed or deemed Filed pursuant to section 501 of the Bankruptcy Code; (2) a Claim or Interest based upon such debt, right, or Interest is Allowed pursuant to section 502 of the Bankruptcy Code; or (3) the Holder of such a Claim or Interest has accepted the Plan. Any default by the Debtors or Affiliates with respect to any Claim or

Interest that existed immediately prior to or on account of the filing of the Chapter 11 Cases shall be deemed cured on the Effective Date. The Confirmation Order shall be a judicial determination of the discharge of all Claims and Interests subject to the Effective Date occurring.

Pursuant to Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided pursuant to the Plan, the provisions of the Plan shall constitute a good faith compromise of all Claims, Interests, and controversies relating to the contractual, legal, and subordination rights that a Holder of a Claim or Interest may have with respect to any Allowed Claim or Interest, or any distribution to be made on account of such Allowed Claim or Interest. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise or settlement of all such Claims, Interests, and controversies, as well as a finding by the Bankruptcy Court that such compromise or settlement is in the best interests of the Debtors, their Estates, and Holders of Claims and Interests, and is fair, equitable, and reasonable. In accordance with the provisions of the Plan, pursuant to Bankruptcy Rule 9019, without any further notice to or action, order, or approval of the Bankruptcy Court, after the Effective Date, the Reorganized Debtors may compromise and settle Claims against the Debtors and their Estates and Causes of Action against other Entities.

B. Debtor Release.

Effective as of the Effective Date, pursuant to section 1123(b) of the Bankruptcy Code, for good and valuable consideration, the adequacy of which is hereby confirmed, on and after the Effective Date, each Released Party is deemed released by each and all of the Debtors, the Estates, and the Reorganized Debtors from any and all claims, interests, obligations, rights, suits, damages, Causes of Action, remedies, and liabilities whatsoever, including any derivative claims, asserted or assertable on behalf of each and all of the Debtors, the Estates, or the Reorganized Debtors, as applicable, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise, that each and all of the Debtors, the Estates, or the Reorganized Debtors would have been legally entitled to assert in its or their own right (whether individually or collectively), or on behalf of the Holder of any Claim or Interest or other Entity, based on or relating to, or in any manner arising from, in whole or in part, any or all of the Debtors, the Debtors' restructuring, the Chapter 11 Cases, the purchase, sale, transfer, or rescission of the purchase, sale, or transfer of any debt, security, asset, right, or interest of any or all of the Debtors or the Reorganized Debtors, the Restructuring Support Agreements, the Upfront Payment, the RSA Forbearance Fees, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the restructuring of Claims and Interests prior to or in the Chapter 11 Cases, the negotiation, formulation, or preparation of the Restructuring Documents or related agreements, instruments, or other documents (including the Restructuring Support Agreements), any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date relating to the Debtors or the Estates, including, for the avoidance of doubt, all claims, Causes of Action, or liabilities arising out of or relating to the Challenged Transactions, the Caesars Cases, and the Prepetition CEC Guarantees; provided that the foregoing Debtor Release shall not operate to waive or release any right, Claim, or Cause of Action (1) in favor of any Debtor, Reorganized Debtor, or New Property Entity, as applicable, arising under any contractual obligation owed to such Debtor or Reorganized Debtor not satisfied or discharged under the Plan or (2) as expressly set forth in the Plan or the Plan Supplement.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the Debtor Release, which includes by reference each of the related provisions and definitions contained herein, and further, shall constitute the Bankruptcy Court's finding that the Debtor Release is: (1) in exchange for the good and valuable consideration provided by the Released Parties; (2) a good faith settlement and compromise of the Claims released by the Debtor Release; (3) in the best interests of the Debtors and all Holders of Claims and Interests; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; and (6) a bar to any or all of the Debtors or their respective Estates asserting any Claim or Cause of Action released pursuant to the Debtor Release.

C. Third-Party Release.

Effective as of the Effective Date, each and all of the Releasing Parties (regardless of whether a Releasing Party is a Released Party) conclusively, absolutely, unconditionally, irrevocably, and forever discharges and releases (and each Entity so discharged and released shall be deemed discharged and released by the Releasing Parties) each and all of the Released Parties and their respective property from any and all claims, interests, obligations, rights, suits, damages, Causes of Action, remedies, and liabilities whatsoever, including with respect to any rights or Claims that could have been asserted against any or all of the Released Parties with respect to the Guaranty and Pledge Agreement (but only to the extent released in connection with the Bank Guaranty Settlement), the Upfront Payment, the RSA Forbearance Fees, any derivative claims, asserted or assertable on behalf of any or all of the Debtors, the Estates, or the Reorganized Debtors, as applicable, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise, that such Entity would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, any or all of the Debtors, the Debtors' restructuring, the Chapter 11 Cases, the Restructuring Support Agreements, the purchase, sale, transfer, or rescission of the purchase, sale, or transfer of any debt, security, asset, right, or interest of any or all of the Debtors or the Reorganized Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the restructuring or any alleged restructuring or reorganization of Claims and Interests prior to or in the Chapter 11 Cases, the negotiation, formulation, or preparation of the Restructuring Documents, or related agreements, instruments, or other documents (including the Restructuring Support Agreements and, for the avoidance of doubt, providing any legal opinion requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Released Party on the Plan or the Confirmation Order in lieu of such legal opinion), any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date relating to the Debtors or the Estates, including, for the avoidance of doubt, all claims, Causes of Action, or liabilities arising out of or relating to each and all of the Challenged Transactions, the Caesars Cases, and the Prepetition CEC Guarantees (including but not limited to any claim under any Indenture or under the Trust Indenture Act). Notwithstanding anything to the contrary in the foregoing, the Third-Party Release shall not release (1) any obligation or liability of any party under the Plan or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan, (2) any postpetition settlement agreements between any Released Party and a creditor of the Debtors or the Estates, or (3) any postpetition liabilities incurred in the ordinary course by the Released Parties.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the Third-Party Release, which includes by reference each of the related provisions and definitions contained herein, and, further, shall constitute the Bankruptcy Court's finding that the Third-Party Release is: (1) in exchange for the good and valuable consideration provided by the Released Parties; (2) a good faith settlement and compromise of the claims released by the Third-Party Release; (3) in the best interests of the Debtors and all Holders of Claims and Interests; (4) fair, equitable and reasonable; (5) given and made after due notice and opportunity for hearing; and (6) a bar to any of the Releasing Parties asserting any claim or cause of action released pursuant to the Third-Party Release.

D. Exculpation.

Effective as of the Effective Date, to the fullest extent permissible under applicable law and without affecting or limiting either of the Debtor Release or Third-Party Release, and except as otherwise specifically provided in the Plan, each Debtor, each Reorganized Debtor, each New Property Entity, each Estate, and each Exculpated Party is hereby released and exculpated from any claim, obligation, Cause of Action, or liability for any prepetition or postpetition action taken or omitted to be taken in connection with, or related to formulating, negotiating, soliciting, preparing, disseminating, confirming, administering, or implementing the Plan, or consummating the Plan (including the Restructuring Support Agreements), the Disclosure Statement, the New Governance Documents, the Restructuring Transactions, and/or the Separation Structure or selling or issuing the New Debt, the New Interests, the New CEC Convertible Notes, the New CEC Common Equity, any New CEC Capital Raise, and/or any other Security to be offered, issued, or

distributed in connection with the Plan, the Chapter 11 Cases, or any contract, instrument, release, or other agreement or document created or entered into in connection with the Plan (including, for the avoidance of doubt, providing any legal opinion requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Exculpated Party on the Plan or the Confirmation Order in lieu of such legal opinion) or any other prepetition or postpetition act taken or omitted to be taken in connection with or in contemplation of the restructuring of the Debtors, except for actual fraud, willful misconduct, or gross negligence in connection with the Plan or the Chapter 11 Cases following the Petition Date, each solely to the extent as determined by a Final Order of a court of competent jurisdiction; provided, however, that in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan. Each of the Debtors, the Reorganized Debtors, the New Property Entities, the Estates, and each Exculpated Party has, and upon completion of the Plan shall be deemed to have, participated in good faith and in compliance with the applicable laws with regard to the restructuring of Claims and Interests in the Chapter 11 Cases and in connection with the Restructuring Transactions, the negotiation, formulation, or preparation of the Restructuring Documents or related agreements, instruments, or other documents pursuant to the Plan, and the solicitation and distribution of the Plan and, therefore, is not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan.

E. Injunction.

Effective as of the Effective Date, pursuant to section 524(a) of the Bankruptcy Code, to the fullest extent permissible under applicable law, and except as otherwise expressly provided in the Plan or for obligations issued or required to be paid pursuant to the Plan or Confirmation Order, or any documents, instruments, or agreements (including those set forth in the Plan Supplement) executed to implement the Plan or Confirmation Order, all Entities who have held, hold, or may hold Claims, Interests, or Liens that have been discharged pursuant to Article VIII.A of the Plan, released pursuant to Article VIII.B or Article VIII.C of the Plan, or are subject to exculpation pursuant to Article VIII.D of the Plan are permanently enjoined, from and after the Effective Date, from taking any of the following actions against, as applicable, any or all of the Debtors, the Reorganized Debtors, the New Property Entities, or the Released Parties: (1) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests; (2) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Entities on account of or in connection with or with respect to any such Claims or Interests; (3) creating, perfecting, or enforcing any encumbrance of any kind against such Entities or the property or the estates of such Entities on account of or in connection with or with respect to any such Claims or Interests; (4) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from such Entities or against the property or Estates of such Entities on account of or in connection with or with respect to any such Claims or Interests unless such Entity has timely asserted such setoff right prior to the Effective Date in a document Filed with the Bankruptcy Court explicitly preserving such setoff, and notwithstanding an indication of a Claim or Interest or otherwise that such Entity asserts, has, or intends to preserve any right of setoff pursuant to applicable law or otherwise; and (5) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests released or settled pursuant to the Plan.

F. Release of Liens.

Except as otherwise provided in the Plan or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan and, in the case of a Secured Claim, satisfaction in full of the portion of the Secured Claim that is Allowed as of the Effective Date, except for any Secured Claims that the Debtors elect to Reinstate in accordance with Article III.B of the Plan, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released, settled, compromised, and discharged, and all of the right, title, and interest of any Holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall automatically revert to the applicable Debtor and its successors and assigns.

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:

CAESARS ENTERTAINMENT
OPERATING COMPANY, INC., *et al.*,

Debtors.

Chapter 11

Case No. 15-01145 (ABG)

(Jointly Administered)

CAESARS ENTERTAINMENT
OPERATING COMPANY, INC., *et al.*

Plaintiff,

-against-

BOKF, N.A., WILMINGTON SAVINGS
FUND SOCIETY, FSB, MEEHANCOMBS
GLOBAL CREDIT OPPORTUNITIES
MASTER FUND, LP, RELATIVE VALUE-
LONG/SHORT DEBT PORTFOLIO, A
SERIES OF UNDERLYING FUNDS TRUST,
SB 4 CF LLC, CFIP ULTRA MASTER
FUND, LTD., TRILOGY PORTFOLIO
COMPANY, LLC, AND FREDERICK
BARTON DANNER,

Defendants.

Chapter 11

Adversary Case No. 15-00149

**STIPULATION BETWEEN WILMINGTON SAVINGS FUND
SOCIETY, FSB, BOKF, N.A., TRILOGY PORTFOLIO COMPANY, LLC,
RELATIVE VALUE-LONG/SHORT DEBT PORTFOLIO, A SERIES OF
UNDERLYING FUNDS TRUST, FREDERICK BARTON DANNER,
AND THE DEBTORS CONCERNING 2L RSA PARTIES**

Pursuant to the Court's July 20, 2016 *Order Setting Deadline for and Hearing on Further Motion for Injunctive Relief* [ECF No. 283] and in order to minimize the need for unnecessary witness testimony or documentary evidence, Caesars Entertainment Operating Company, Inc. ("CEOC") and its affiliated debtors (with CEOC, the "Debtors"), Defendant

Wilmington Savings Fund Society, FSB (“WSFS”), Defendant BOKF, N.A. (“BOKF”), Defendant Trilogy Portfolio Company, LLC (“Trilogy”), Defendant Relative Value-Long/Short Debt Portfolio, A Series of Underlying Funds Trust (“Relative Value”) and Defendant Frederick Barton Danner (“Danner”) stipulate to the facts below.

IT IS HEREBY STIPULATED AND AGREED AS FOLLOWS:

1. Quantum Partners, L.P c/o Soros Fund Management LLC (“Quantum Partners”), Paulson & Co. Inc. (“Paulson”), Canyon Capital Advisors LLC (“Canyon”) and Mason Capital Management LLC (“Mason,” and together with Quantum Partners, Paulson, and Canyon, the “2L RSA Parties”) are signatories to the Restructuring and Support Agreement dated as of July 31, 2016, between and among CEOC, Caesars Entertainment Corp. (“CEC”) and the 2L RSA Parties (the “2L RSA”).

2. The Debtors have produced a redacted, executed copy of the 2L RSA, bates labeled CEOC_105_Adversary_008601 – 008667.

3. The 2L RSA Parties executed the 2L RSA as of Sunday, July 31, 2016.

4. As of the date they executed the 2L RSA, Quantum Partners owned 3,301,393 shares of the equity in CEC, Paulson owned 14,441,000 shares of the equity in CEC, and Mason owned 5,723,608 shares of the equity in CEC.

5. As of the date they executed the 2L RSA, Quantum Partners owned 6,510,083 shares of the equity in Caesars Acquisition Company (“CAC”), Paulson owned 13,141,098 shares of the equity in CAC, and Mason owned 944,900 shares of the equity in CAC.

6. The holdings as of July 31, 2016 of the funds and accounts managed by Canyon Capital Advisors LLC and its affiliates were as follows:

CEOC First Lien Senior Secured Notes (9% due 2020; 11.25% due 2017 and 8.5% due 2020)	\$833,452,000
CEOC 10% Second-Priority Senior Secured Notes due 2018	\$454,342,239.61
CEOC Third A&R Credit Agreement dated July 25, 2014	\$90,565,849.78
CERP Debt (L+600 1 st Lien Term Loan due 2020)	\$10,387,558
CAC Debt (Caesar Drai's Term Loan)	\$7,667,439
No. of CEC Shares	3,018,274
No. of CAC Shares	1,866,647

7. As of August 1, 2016, common stock outstanding for CEC was 146,922,790 shares.

8. As of August 1, 2016, the Class A common stock outstanding for CAC was 137,422,736 shares.

9. The 2L RSA Parties collectively own approximately 27% of Second Lien Notes.¹

[Remainder of page intentionally left blank]

¹ The term "Second Lien Notes" refers to, collectively, the 12.75% Second-Priority Senior Secured Notes due 2018, the 10.00% Second-Priority Senior Secured Notes due 2018, and the 10.00% Second-Priority Senior Secured Notes due 2015.

Dated: August 22, 2016

Respectfully submitted,

/s/ Edmund A. Aronowitz
Edmund S. Aronowitz, Esq.
GRANT & EISENHOFER P.A.
30 North LaSalle Street
Suite 1200
Chicago, IL 60602
Tel: (312) 214-0000
Fax: (312) 214-0001
earonowitz@gelaw.com

-and-

Gordon Z. Novod, Esq. (admitted *pro hac vice*)
GRANT & EISENHOFER P.A.
485 Lexington Avenue
29th Floor
New York, NY 10017
Tel: (646) 722-8523
Fax: (646) 722-8501

-and-

Mark C. Gardy, Esq. (admitted *pro hac vice*)
James S. Notis, Esq. (admitted *pro hac vice*)
Meagan Farmer, Esq. (admitted *pro hac vice*)
GARDY & NOTIS, LLP
Tower 56
126 East 56th Street, 8th Floor
New York, NY 10022
Tel: (212) 905-0509
Fax: (212) 905-0508

Attorneys for Frederick Barton Danner

/s/ Timothy W. Hoffmann
Timothy W. Hoffmann, Esq. (IL # 6289756)
JONES DAY
77 West Wacker
Chicago, IL 60601-1692
Tel: (312) 782-3939
Fax: (312) 782-8585
thoffmann@jonesday.com

-and-

Bruce Bennett, Esq.
James O. Johnston, Esq.
Sidney P. Levinson, Esq.
Joshua M. Mester, Esq.
JONES DAY
555 South Flower Street
Fiftieth Floor
Los Angeles, California 90071
Tel: (213) 489-3939
Fax: (213) 243-2539

*Counsel for Wilmington Savings Fund
Society, FSB, as successor indenture trustee*

/s/ Mark F. Hebbeln

Mark F. Hebbeln, Esq.
Lars A. Peterson, Esq.
FOLEY & LARDNER LLP
321 North Clark Street, Suite 2800
Chicago, IL 60654-5313
Tel: (312) 832-4394
Fax: (312) 832-4700
mhebbeln@foley.com
lapeterson@foley.com

-and-

Andrew I. Silfen, Esq. (admitted *pro hac vice*)
Mark A. Angelov, Esq. (admitted *pro hac vice*)
Michael S. Cryan, Esq. (admitted *pro hac vice*)
ARENT FOX LLP
1675 Broadway
New York, NY 10019
Tel: (212) 484-3900
Fax: (212) 484-3990

Jackson D. Toof, Esq. (admitted *pro hac vice*)
ARENT FOX LLP
1717 K Street, NW
Washington, DC 20006
Tel: (202) 857-6000
Fax: (202) 857-6395

Attorneys for Defendant BOKF, N.A.

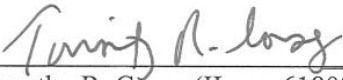
/s/ Jeffrey J. Zeiger

James H.M. Sprayregen, P.C.
David R. Seligman, P.C.
David J. Zott, P.C.
Jeffrey J. Zeiger, P.C.
KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS INTERNATIONAL LLP
300 North LaSalle
Chicago, Illinois 60654
Tel: (312) 862-2000
Fax: (312) 862-2200

- and -

Paul M. Basta, P.C.
Nicole L. Greenblatt, P.C.
KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS INTERNATIONAL LLP
601 Lexington Avenue
New York, New York 10022-4611
Tel: (212) 446-4800
Fax: (212) 446-4900

Counsel to the Debtors and Debtors in Possession


Timothy R. Casey (IL no. 6180828)
DRINKER BIDDLE & REATH LLP
191 N. Wacker Drive, Ste. 3700
Chicago, IL 60606
Tel: (312) 569-1201
Fax: (312) 569-3201
timothy.casey@dbr.com

-and-

James H. Millar
Kristin K. Going (admitted *pro hac vice*)
1177 Avenue of the Americas
41st Floor
New York, NY 10036
Tel: (212) 248-3140
Fax: (212) 248-3141
james.millar@dbr.com
kristin.going@dbr.com

*Counsel to Trilogy Portfolio Company, LLC,
and Relative Value-Long/Short Debt Portfolio,
A Series of Underlying Funds Trust*